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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 ~~1929~~ 1930

No. ~~39~~ 32 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

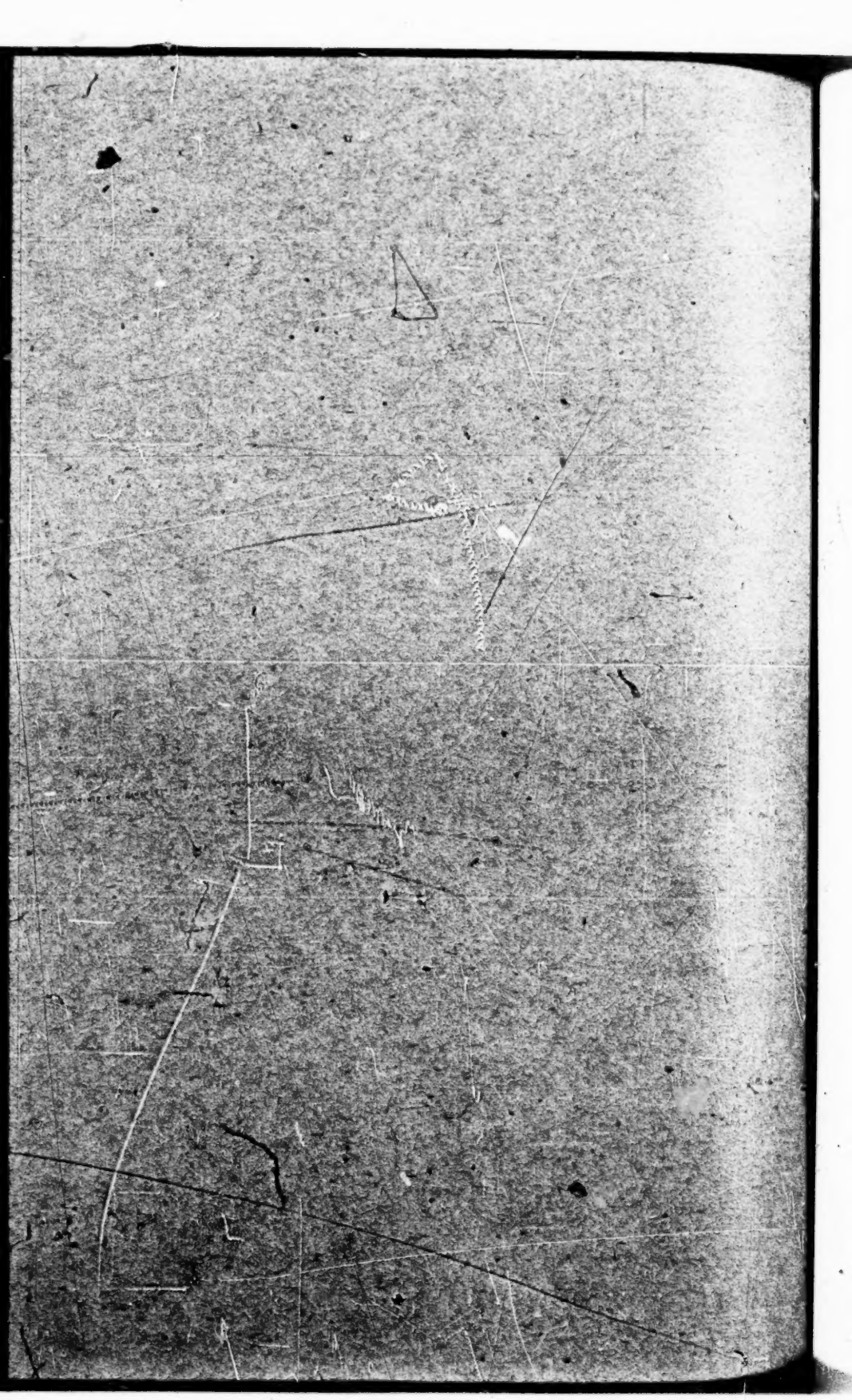
vs.

SOUTH CAROLINA TAX COMMISSION

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

FILED JANUARY 3, 1928

(33,131)



(33,131)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 679

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IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

INDEX

	Original	Print
Proceedings in supreme court of South Carolina	1	1
Statement	1	1
Exhibit No. 1—Computation of tax	3	2
Issue and testimony covering same	5	6
Stipulation re evidence	9	8
Exhibit No. 2—Last will and testament of Francis Beidler	10	8
Exhibit "A"—Contract between Santee River Lumber Co. and Brooklyn Cooperage Co	25	20
"B"—Affidavit of M. B. Cross	43	33
"C"—Provisions of New York Civil Practice Act	50	38
"D"—Provisions of Massachusetts statutes and decisions	60	45

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 7, 1928

	Original	Print
Exhibit "E"—Provisions of Pennsylvania laws	67	51
"F"—Letter from Charles U. Becker to A. B. Schoffner	71	54
"G"—Extracts from Missouri statutes	72	54
"H"—Letter from Jim B. Higgins to Arthur B. Schoffner	75	56
"I"—Digest of statutes of Arkansas	76	57
"J"—Excerpt from inheritance-tax laws of Illinois and decision construing same	79	59
"K"—Affidavit of George Engelking	84	63
"L"—Application by American Sugar Refining Co. for listing bonds	85	64
"M"—Extracts from "A Century of Sugar Refining"	103	81
Statement re Exhibit "N"	107	84
Exhibit "O"—Affidavit of A. B. Siegel	108	85
"P"—Affidavit of Erastus H. Hewitt	110	87
"Q"—Affidavit of Alfred S. Weill	112	89
Notice of appeal	114	90
Exceptions	114	90
Agreement re case on appeal	117	92
Opinion, Ramage, J	118	93
Petition for rehearing (omitted in printing)	131	
Order denying rehearing	140	113
Petition for stay of remittitur	141	113
Order staying remittitur	143	115
Clerk's certificate (omitted in printing)	144	
Assignments of error	145	115
Petition for writ of error	149	118
Order allowing writ of error	156	124
Bond on writ of error (omitted in printing)	157	
Writ of error	159	125
Certificate of lodgment (omitted in printing)	161	
Citation and service (" " ")	162	
Return to writ of error (" " ")	164	
Statement of points to be relied upon and designation of parts of record to be printed	165	126
Stipulation and addition to record		128

[fol. 1]

IN SUPREME COURT OF SOUTH CAROLINA

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of Francis Beidler, Appellants,

against

SOUTH CAROLINA TAX COMMISSION, Respondent

Case on Appeal

Arthur B. Schaffner, of Chicago, Hendersons & Salley, Appellant's Attorneys.

John M. Daniel, Attorney General; J. Fraser Lyon, Respondent's Attorneys.

STATEMENT

Appeal from decision of South Carolina Tax Commission, assessing an Inheritance Tax on certain assets of the estate of Francis Beidler, deceased.

On March 4, 1924, Francis Beidler, a legal resident of Chicago, in the State of Illinois, died in said State, leaving a last Will and Testament, which was duly probated in the Probate Court of Cook County, Illinois, and Francis Beidler, II, and George Engelking thereafter duly qualified and are now acting as Executors of said estate.

At the time of his death the said decedent owned among other personal property, the following, as to which an Inheritance Tax has been assessed by the South Carolina Tax Commission, to wit:

[fol. 2] Eight Thousand (8,000) shares of the capital stock of Santee River Cypress Lumber Company, a South Carolina corporation, which by agreement reached between the Tax Commission and the attorneys for the Executors has been valued for the purpose of the assessment of the South Carolina Inheritance Tax at Two Hundred Four Dollars ($204.00) per share, or One Million Six Hundred Thirty Two Thousand Dollars ($1,632,000.00). The balance of the stock in said Lumber Company is owned by the widow and children of the decedent, Mrs. Elizabeth Beidler owning two

thousand (2,000) shares, Francis Beidler, II, twenty-five hundred (2,500) shares and Elizabeth Beidler, Jr., twenty-five hundred (2,500) shares.

In addition thereto said Santee River Cypress Lumber Company was indebted to the decedent at the time of his death in the sum of Five Hundred, Fifty-six Thousand, Eight Hundred Sixty-four and 22/100 Dollars ($556,-864.22) for advances theretofore made by him to said Company, and in the sum of Sixty-four Thousand, Six Hundred Seventy-two Dollars ($64,672.00) for dividends previously declared by said Company on said shares of stock above described. Said indebtedness was an open unsecured book account which was entered upon the books of the Santee River Cypress Lumber Company kept at Eutawville, S. C. Mr. Beidler also kept a complete set of personal books in Chicago upon which appear entries of said amounts being due him by Santee River Cypress Lumber Company, except the item of $64,672.00 dividend.

The Executors of said estate filed with the South Carolina Tax Commission, as required by the Inheritance Tax Law of the State of South Carolina, an affidavit, setting out in said affidavit all of the above assets, but specifically claiming and submitting that the two items of $556,864.22 and $64,672.00 above referred to were not on March 4, [fol. 3] 1924, taxable under the laws of South Carolina then existing.

On July 25th, 1925, the South Carolina Tax Commission levied an Inheritance or transfer tax upon all of the above assets of One Hundred Forty-four Thousand, One Hundred Six and 10/100 ($144,106.10) Dollars. The following is the computation sheet:

EXHIBIT No. 1

South Carolina Tax Commission, Inheritance Tax Division

(Nonresident Testate)

Computation Sheet

Will of Beidler, Francis, late of State of Illinois.
Executor: Geo. Engelking & Francis Beidler II.
Address: 20 W. Jackson Blvd., Chicago.

Attorneys: Henderson & Salley. Address: Aiken, S. C. Date of Qualification: 1-28-25. Date Tax Due: July 31, 1925.

Property and Summary of Distribution

Personal Estate	$2,253,536.22
Real Estate	
Total Estate	2,253,536.22
Debts and Expenses	5,000.00
Net Estate	2,248,536.00
Exemptions	20,200.00
	$2,228,336.00

Certifications

	Date	Certificate No.	Amount
To Executor	July 25th, 1925.		$144,106.10

[fol. 4]

Computation of Tax

Devisees and legatees — Name	Relationship	Class	Total shares	Exemption	Taxable shares	Rate, %	Net tax
(1) Elizabeth L. Beidler....	Wife	2	$749,512.07	$10,000.00	$739,512.07	1	200.00
						2	400.00
						3	1,200.00
						4	2,800.00
						5	7,500.00
						6	26,370.72
							38,470.72
(2) Francis Beidler.....	Son	4	500,000.00	5,000.00	495,000.00	1	200.00
						2	400.00
						3	1,200.00
						4	2,800.00
						5	7,500.00
						6	11,700.00
							23,800.00
(3) Elizabeth L. Beidler....	Daughter	4	500,000.00	5,000.00	495,000.00	Same as No. 2	
(4) The Francis Beidler						or	23,800.00

Charitable Trust.....	None	7	499,024.15	200.00	498,824.15	4	800.00
						6	1,200.00
						8	3,200.00
						10	7,000.00
						12	18,000.00
						14	27,835.38
							58,035.38
			2,248,536.22	20,200.00	2,228,336.22		$144,106.10

[fol. 5] The Executors filed with the Tax Commission Cahill's Revised Statutes of the State of Illinois, Sec-. 10, 11, 12, 13, of Chapter 41, showing the rights of a widow to renounce a will of her husband in the State of Illinois, and her right after so renouncing to take absolutely one-third of all the personalty of his estate; and the Executors also filed a certified copy of Mrs. Francis Beidler's renunciation of the Will of her husband and her election to take her legal share under the Statute. In accordance therewith the South Carolina Tax Commission have in distributing the estate in South Carolina for the purpose of the assessment of the South Carolina Inheritance Tax assigned one-third of the estate in South Carolina to Mrs. Beidler; from which no appeal is taken. The value of the estate out of South Carolina has not been ascertained by the South Carolina Tax Commission, but for the purposes of this appeal, it is agreed that the Estate outside of South Carolina was large and valuable, probably approximating $1,000,000.00.

THE ISSUE AND THE TESTIMONY COVERING SAME

First Issue

Are the items above referred to, of $556,864.22 and of $64,572.00 taxable herein?

Upon this issue the Executors seasonably offered in evidence before the South Carolina Tax Commission the following evidence, which was duly received and considered:

(A) Contract between Santee River Lumber Co. and Brooklyn Cooperage Company as to sale of timber, with guarantee of American Sugar Refining Co., and authorizations by Boards of Directors of said Corporations.

[fol. 6] (It is admitted that the companies to said contract and guaranteeing same are corporations of the respective States as is recited in said Exhibit.)

(B) Affidavit of M. B. Cross.

(C) Provisions of New York Civil Practice Act submitted.

(D) Provisions of Massachusetts Statutes and Decisions submitted.

(E) Provisions of Pennsylvania Law submitted.

(F) Letter of Secretary of State of Missouri.

(G) Provisions of Missouri Statutes submitted.

(H) Letter of Secretary of State of Arkansas.

(I) Arkansas Statutes submitted.

(J) Excerpts from Inheritance Tax Law of Illinois and decision construing same.

(K) Affidavit of Executors of Beidler Estate as to paying Illinois Inheritance Tax.

The following documents were introduced in evidence before the Tax Commission by the Executors herein. The Commission did not consider them and objected to their constituting a part of the record upon appeal herein, but it was agreed that said documents should be printed, the Supreme Court to be the judges of the relevancy and admissibility thereof, and to consider the same only if they are found to be relevant and admissible—(no exceptions by either party being required to bring said question before the Court and no question being made as to the form in which said evidence was presented to the Commission), to wit:

(L) Application by American Sugar Refining Company to New York Stock Exchange for listing its bonds.

(M) Pages 16-18 of "A Century of Sugar Refining" and 1924 Report of American Sugar Refining Company.

[fols. 7 & 8] (N) Agreement between American Sugar Refining Company and Chase National Bank.

(O) Affidavit of A. B. Siegel.

(P) Affidavit of Erastus H. Hewitt.

(Q) Affidavit of A. S. Weill.

The Tax Commission nevertheless assessed an Inheritance Tax upon the aforesaid items.

During the course of the hearing before the South Carolina Tax Commission the Executors formally interposed the claim that to tax said items would be repugnant to and in contravention of the 14th Amendment of the Constitution of the United States and would be to deprive the Estate of property without due process of law, and would be a denial of the equal protection of the law to said estate,

it being contended that said items of debts were not upon the date of the death of said Francis Beidler property within the State of South Carolina and hence not taxable herein.

[fol. 9] STIPULATION RE EVIDENCE

It is stipulated that all decisions of States other than South Carolina referred to in the Exhibits are considered in evidence herein without printing the same in the case in full. It is also stipulated that all statutes set out in any of the Exhibits herein shall be considered in evidence.

[fol. 10] The Exhibits

EXHIBIT No. 2

Last Will and Testament of Francis Beidler, Deceased

I, Francis Beidler, of the City of Chicago, County of Cook and State of Illinois, being of sound and disposing mind and memory, do hereby make, publish and declare this my last Will and Testament, hereby revoking and cancelling any and all wills and testaments by me heretofore made.

First. I direct my executors hereinafter named to pay all my just debts and funeral expenses, and further direct such executors, in case I shall die without owning a suitable burial lot, to purchase such family burial lot in the vicinity of Chicago as to them may seem proper, after consulting with my wife and children, and to make provision for the perpetual care and maintenance of same, as well as of the vault, monument or improvements thereon.

I direct said executors to erect upon such lot a suitable family vault or a suitable family monument, with foundations at least eight feet deep, and I direct that I be buried in a copper casket, which shall be placed within a grave or vault of substantial masonry so as to be permanent and enduring, the form, size and details of which I hereby leave to the discretion of my executors, subject to consultation with my wife and children.

Second. I give, devise and bequeath unto my beloved wife, Elizabeth L. Beidler, all my jewelry, books and personal and household effects of every kind and description, as well as all horses, carriages, automobiles, vehicles and other equipment at the time of my death used for family [fol. 11] purposes and kept in the stable upon the homestead premises, together with all personal property in said stable at the time of my death, also all jewelry, precious stones and heirlooms which may be found in my safety box.

Third. I give, devise and bequeath all the rest, residue and remainder of my estate, of every kind and nature unto my trustees hereinafter named, for the uses and purposes, and upon the trusts and with the powers hereinafter expressed.

(a) I hereby authorize and empower my said trustees to manage and control all of my said estate, to collect in the rents, issues, profits and income thereof, to pay all taxes and current expenses and costs and charges of maintenance and insurance thereof, and to apply the net income remaining in the manner and upon the conditions hereinafter provided, to make investments in real estate or personal property and to change or vary any or all investments as they in their sole discretion shall deem advisable and without being limited to such investments as the law permits to trustees. I recommend to them, however, in all cases to have regard to the security of the investment rather than to a high rate of income and to distribute such investments among different localities and different kinds of property so that in the event of disaster in any particular locality or affecting any particular kind of property, the entire estate will not be sacrificed or impaired, such reinvestments to be in properties free of debt and fully paid for by the estate.

(b) I hereby authorize and empower said trustees in their discretion to continue any business and to conserve any business interests which I may leave, in such manner as to them may seem wise and prudent, and to that end I authorize them to loan moneys of the estate to any corporation in which I own a controlling interest or to which I have heretofore been accustomed to make advances, and [fol. 12] to borrow money for the use of any such corporation, to endorse or guarantee the obligations, contracts

or indebtedness of any such corporation, to execute renewals and extensions of any debts or obligations upon which I may be liable at the time of my death and to borrow money for the purpose of paying or satisfying any of my debts or obligations or for the purpose of paying inheritance and estate taxes and costs and expenses of administration or other charges imposed by law on my estate. Without limiting their powers in this regard I advise them, however, not to borrow money for the purpose of enlarging or extending the business of any such corporation, but on the contrary, so far as consistent with the prudent management of such corporations and the interests of my estate, gradually to reduce the indebtedness of all such corporations so that ultimately such endorsements and guarantees will become unnecessary.

(c) I hereby authorize and empower said trustees in their discretion to lease or improve any real estate which I may leave, but not to borrow money for making such improvements or for acquiring any additional real estate. In view of present conditions as to ninety-nine year and other long leaseholds, I urge upon said trustees the retention of all my individual real estate and the making, where possible, of long term leases thereof, with due regard to the probable increase in future value of such property leased, the respective lessees to assume all taxes and other charges so that the rent reserved shall be net to my estate, without involving my estate in any liability of any kind. If, however, it shall at any time seem best to said trustees to dispose of my real estate, or any part thereof, I hereby authorize them to sell and convey the same for such prices and upon such terms as they may consider reasonable, either for cash or partly for cash and the balance to be secured by mortgage or trust deed upon the premises conveyed.

[fol. 13] (d) I also authorize and empower my said trustees at any time in their discretion, and so often as they shall see fit, to sell any or all of my personal property for such prices and upon such terms as to credit as they may deem reasonable. No purchased, either of real estate or personal property, from said trustees, shall at any time be liable to see to the application of the purchase money. The proceeds of any such sales, either of real

estate or personal property, shall become a part of my estate and subject to the trusts herein declared with respect to the same.

(e) I desire my trustees, so far as they prudently can, to protect the interests of all minority stockholders in corporations which I control, dealing equitably and justly with them as I would do in my lifetime, without regard to any advantage to my estate as the result of such control, and as I would wish to be dealt with by controlling interests in corporations in which I might be a minority stockholder.

(f) I direct said trustees to pay to my wife, Elizabeth L. Beidler, the sum of One Thousand Two Hundred and Fifty Dollars ($1,250.00) per month during her natural life, which sum, together with the other provisions herein made for my wife, shall be accepted and received by her in lieu of dower and of any and all other rights and interests in my estate, and such sum to be free of any claims of any character against her. As my wife owns the homestead and contents clear and has other liberal income coming from me originally, and the provisions made in this Will for our children and provisions made for them by me prior to the executing of this Will, render it unnecessary for her to provide for them, the income above directed to be paid to my wife appears to be more than liberal for her requirements.

(g) I direct said trustees to pay over to my son, Francis Beidler II, and my daughter, Elizabeth L. Beidler, Jr., as and when each reaches the age of thirty (30) years, the sum of Two Hundred and Fifty Thousand Dollars ($250,-[fol. 14] 000.00) in cash or securities at market value, or in real estate at a fair valuation, and I further direct said trustees to pay to each of my said children the further sum of Two Hundred and Fifty Thousand Dollars ($250,000.00) as and when each one of them reaches the age of forty (40) years, such further payment to be likewise made in cash or securities or real estate, the trustees to retain the real estate unless the money, stocks and securities of my estate shall be insufficient to make such payments or it seems inadvisable to dispose of them. In event of the death of my said children, or either of them, before the time fixed in this paragraph for the making of such payments, or either

of them, at a fair valuation, and I further direct said trustees to pay leaving issue him or her surviving, then such deceased child's share of the payments which would have become due if the parent had not deceased, shall be paid over to the issue him or her surviving on the date when the deceased would have been entitled to payment thereof if living.

(h) It is my wish and I hereby declare that any and all income and payments from my estate heretofore directed to be paid to my wife and children and to the children of any deceased child, shall be free and clear of any claim or claims, demand or demands of any person or persons whomsoever against them, or any or either of them, and that any such income and payments shall be paid by my said trustees to the said beneficiaries respectively in person, for their sole use and benefit, and that none of the same shall be subject to any proceedings of Court or be applied to the payment of any debt or obligation of said beneficiaries, or any or either of them, and no such beneficiary shall have any right to anticipate, assign or pledge his or her share of such income or his or her share of such payments.

(i) I direct that so long as the Jacob Beidler School retains such name and until the final distribution of my estate as hereinafter provided, at each yearly graduation [fol. 15] from the highest grade the following be given to each graduating student as an emblem of patriotism:

One copy of the Declaration of Independence,

One copy of the Constitution of the United States,

(Each of the above to be in fine form, of heavy paper, large type, bound in sheets with leather covers, suitable for library or table.)

One standard History of the Revolutionary War,

One standard History of the Spanish War,

One standard History of the late World War.

I also direct that each year, so long as said school retains its name of Jacob Beidler School and until such final distribution of my estate, a large silk flag be furnished said school for its pole, and two smaller ones for each room, to be hung over the platform, with the consent of the Board of Education, in constant view of all pupils.

(j) I further direct said trustees to pay all of the debts and obligations, direct and indirect, primary and secondary,

of my estate, including as well those incurred by me in my lifetime as those incurred by said trustees under the powers conferred upon them by this Will, other than the indebtedness of One Hundred and Fifty Thousand Dollars ($150,000.00) (or such sum as may remain unpaid on said indebtedness at the time of my death) to the University of Chicago, secured by mortgage upon my real estate.

(k) I further direct said trustees to accumulate a reserve fund of not less than One Hundred Thousand Dollars ($100,000.00) in cash or United States bonds, to be held and set apart by said trustees until the final distribution of my estate, as a protection against unforeseen contingencies which might otherwise necessitate the sale of property of my estate at a sacrifice. By these directions as to the application of income, I desire to avoid, so far as possible, any [fol. 16] occasion for any such sale at a sacrifice, but it is not my intention to forbid said trustees from selling any property, whenever they may deem such sale advisable, or from using the proceeds of any such sale for the payment of debts and obligations of my estate or to establish said reserve fund or for any other proper purpose.

(l) I further direct that in the event any one or more of my brothers shall be in want for the necessaries of life said trustees shall pay to such brother or brothers and each of them so in want the sum of Five Thousand Dollars ($5,000.00) per annum to be paid in equal monthly installments. And if a child or children of any of my said brothers or my sister shall at any time be in want for the necessities of life and both the parents of such child or children of my said brothers or sister shall be dead at the time such child or children shall be so in want, then I further direct that said trustees shall pay to each of said children so in want the sum of One Hundred Dollars ($100.00) a month during the life of the one so in want. But such provision for payment in this paragraph contained shall be made only so long as such person requiring assistance is so in want of the necessaries of life and shall terminate whenever conditions change so that such person shall again be able to prove for himself or herself. My trustees under this Will shall be the sole judges as to whether or not provision for payment shall be made under this paragraph for payment to any such person or persons seemingly requiring same. It shall not be necessary for said trustees to set aside any special

fund to meet the requirements in this paragraph contained, it being quite safe to assume that the income of the estate will be sufficient from time to time to meet such payments as may be required to be made.

(m) When all the debts and obligations of my estate other than said mortgage indebtedness, shall have been paid and proper provision shall have been made to insure the [fol. 17] prompt payment to my wife of the sum of One Thousand Two Hundred and Fifty Dollars ($1,250.00) monthly during her natural life and the payments provided to be made to my children and said reserve fund of One Hundred Thousand Dollars ($100,000.00) shall have been set apart, I direct said trustees to establish a trust fund in perpetuity, in cash, securities or other property, in the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00) to be known as the Francis Beidler Charitable Trust, the trustees for which charitable trust, three (3) in number, are hereinafter named and who shall take possession of said charitable trust estate immediately upon same being set apart by the trustees under this Will, for the uses and upon the following trusts and with the powers hereinafter expressed:

1. The trustees of said Francis Beidler Charitable Trust shall have authority and I hereby empower said trustees to manage and control all of said trust estate, to collect in the rents, issues, profits and income thereof, to pay all taxes and current expenses and costs and charges of maintenance thereof and to apply the net income remaining in the manner and upon the conditions hereinafter provided, to make investments in real estate or personal property and to change or vary any or all such investments as they, in their sole discretion, shall deem advisable and without being limited to such investments as the law permits to trustees. I make the same recommendations to them, however, as I have made to the trustees of this Will as to the kind and nature of such investments but without limiting their powers in this regard. I further authorize and empower them, in their discretion to lease or improve any real estate constituting a part of said charitable trust but not to borrow money for making such improvements or for acquiring any additional real estate. I urge upon them the retention of [fol. 18] the real estate of said charitable trust. If, how-

ever, it shall at any time seem best to said trustees to dispose of said real estate, or any part thereof, I hereby authorize them to sell and convey the same for such prices and upon such terms as they may consider reasonable, either for cash or partly for cash and the balance to be secured by mortgage or trust deed upon the premises conveyed. I also authorize and empower them at any time, in their discretion and so often as they shall see fit, to sell any or all of the personal property of said charitable trust for such prices and upon such terms as to credit as they may deem reasonable. No purchase of either real estate or personal property from said trustees shall at any time be liable to see to the application of the purchase money. The proceeds of any such sales of either real estate or personal property shall become a part of said charitable trust estate and subject to the trusts herein declared with respect to the same.

2. Said trustees shall distribute and pay over the net income of said trust estate to such charitable corporations as they may jointly determine upon, in the proportions and amounts to be fixed by them but they shall not set aside and pay over to any one of such corporations more than one-thirtieth (1/30) part of the total net income of said charitable trust estate.

3. Said trustees shall have the power and authority to terminate and cease payment of any part of said net income to any of said charitable corporations when, in their judgment, such corporation or corporations shall have ceased to be worthy of charitable aid.

4. Said trustees shall have the power and authority to add an additional corporation or corporations to the list of charitable corporations sharing in said net income from time to time to take the place of any such as have been [fol. 19] dropped from the list by reason of the determination of said trustees under Paragraph "3" hereof or as an addition or additions to such list, provided, however, that no such charitable corporation once established upon the list of beneficiaries hereunder shall be dropped without the unanimous approval of said trustees. I direct that said trustees make their decision as to the worthiness of any charitable corporation to be aided under this trust as the result of careful investigation and pursuant to my express desire that assistance be given to those who are unable to

care for themselves without regard to the character or cause of their helplessness and not to assist those who are physically and mentally capable of earning a living.

5. I hereby nominate and appoint my friend, George Engelking, my son, Francis Beidler II, and my nephew, J. Beidler Camp, to be the trustees of this Francis Beidler Charitable Trust. In event of the death, voluntary withdrawal or inability to serve of any one or more of said three (3) trustees, the remaining trustee or trustees shall elect a successor or successors who shall thereupon have the full power, authority, duties and obligations of such trustee or trustees originally appointed and whose position he or they succeed to, except that no person related to the remaining trustee or trustees, either by blood or marriage, shall be eligible to election or appointment hereunder.

6. I recognize the fact that the trustees of this fund are participants in this charitable work with myself and should enjoy the credit of the good work that they may be able to do with the fund at their disposal, as the result of their efforts and ability and sacrifice of time in administering this charitable trust and expending the income thereof, and [fol. 20] for this reason I believe that their work should be done with a minimum compensation and that such a task could not be expected by many a man particularly worthy of acting as trustee without some slight compensation for the sacrifice of his time and energies. The compensation of said trustees shall be fixed by themselves by mutual agreement among themselves, said compenastion to be not to exceed Two Thousand Five Hundred Dollars ($2,500.00) per annum to each trustee. My intention in leaving this trust estate to a body of trustees in perpetuity with the broad powers and authority given them is to throw the responsibility and control in their hands for the permanent establishment of this work so that they will take a personal interest in safeguarding and expending it in every way possible, they being essential to its wise and proper conduct.

The establishing of this trust is conditional as stated in Paragraph "(m)" hereof, upon the carrying out of the prior provisions of my Will except that the trustees of my Will may establish this charitable trust whenever the said

prior provisions and particularly those relating to the bequests to my own family have been safeguarded and made certain of accomplishment. If at said time there be not sufficient available cash, securities and other property to fill the quota of One Million Five Hundred Thousand Dollars ($1,500,000.00) they may, and I desire that they shall initiate said trust with a lesser amount, adding thereto from time to time as cash, securities and other property become available until the full amount has been attained.

(n) After the death of my wife, and twenty (20) years after the death of the last surviving of my children, I direct that the entire remainder of my estate (exclusive of said Francis Beidler Charitable Trust Estate) shall be paid over, conveyed and delivered to the descendants of my children, such descendants to take per stirpes and not [fol. 21] per capita and to be and become their absolute property forever; but if at the time fixed for such distribution or at any earlier time after the death of my wife and of the last of my chidlren, there shall be no descendants of my children living, then I direct that my estate shall be paid over, conveyed and delivered to the then surviving children and the children of any deceased child, of my brothers, Augustus F. Beidler, George Beidler and David Beidler and of my sister, Mrs. A. B. Camp, share and share alike as between all the then surviving children of my brothers and sister, but the child of any deceased child to take the share of their parent, and to be their absolute property forever.

Fourth: As this Will is the result of much thought and careful consideration on my part and many conferences with my attorney, during which each phase of the various matters herein contained have been given thoughtful consideration, and this Will now represents and sets forth my final wishes and desires as to the disposition of my estate after my death, I request that each provision herein contained shall be carried out as herein set forth, that no beneficiary hereunder shall question or in any way contest the whole or any part hereof, and I will and direct that as to any person or persons beneficiary hereunder who shall institute or instigate or promote a contest of this Will, that all right of such person or persons to take under or profit

by this Will shall at once cease and determine and such person or persons shall thereby forfeit all right to participate as a beneficiary or beneficiaries hereunder.

Fifth. It is my wish that my son will incline to scientific study, statesmanship or political pursuits and that my daughter may incline to spend as much of her time as possible in charitable pursuits and the bettering of humanity in all ways within her power; my desire, in view of my belief that the provisions of this Will are ample for their [fol. 22] proper care and support, being that their lives should be spent in the interest of their country and of humanity rather than in delving for additional material accumulations, so that they may thereby pay the debts of their ancestors, and their own for the opportunities afforded by their country for the development of themselves and their material possessions; and with this in mind I have endeavored in my Will to direct the investment of my estate in an income-producing manner rather than in investments of a business or speculative character and so to provide for them as to afford them time and opportunity to devote themselves to such studies and duties unhampered by business cares.

Sixth: I hereby nominate and appoint my friend, George Engelking, and my son, Francis Beidler II, to be executors of and trustees under this, my Last Will and Testament. And in case either of them shall become ineligible then I hereby nominate and appoint my nephew, J. Beidler Camp, my friend, Vojta F. Mashek and The Central Trust Company of Illinois, respectively, to succeed in the order named to any vacancy in such executorship or trusteeship.

It is my desire that there shall always be at least two (2) executors of and trustees under this Will, but should all the above named natural persons die or refuse or be ineligible to act, then I nominate and appoint said The Central Trust Company of Illinois as sole executor and trustee, with all the powers herein conferred upon my executors and trustees.

I hereby request that no security be required of any of said executors and trustees, and I direct that they shall be entitled for their services as executors and trustees to reasonable compensation not exceeding Five Thousand Dollars ($5,000.00) per year each. My executors or executor for the time being acting as such shall have the power, and I do

hereby authorize and empower them, if and whenever [fol. 23] in the settlement of my estate they deem it advisable, at their discretion to sell and convey any or all of my real or personal property, at public or private sale, for cash or on credit, and to execute all deeds and other instruments necessary to pass a sufficient title thereto.

I have selected George Engelking as one of my executors and trustees in view of his knowledge of my property and personal affairs and of the lines of business in which I am interested, as well as because of my absolute confidence in him and in his friendship for me. I have also selected my son as executor and trustee. Their age renders a long period of life probable for them, while my brothers and old chums, because of their age and frequent and long absences from the City of Chicago, would be less suitable.

Seventh: If at the time of my death I shall be the owner of any real estate situate in any other state or country than the State of Illinois, and the laws of such other state or country shall be such that any of the provisions of this Will might be in conflict therewith, or would be to any extent made ineffective or inoperative thereby, then it is my will and I direct that my executors and trustees shall have the power, and shall proceed to sell forthwith such real estate and convert the same into money or other personal property and bring such proceeds into the State of Illinois, and hold such proceeds as a part of my estate upon the trusts and for the purposes in this Will directed

In Witness Whereof I have hereunto set my hand this twenty-seventh day of February, A. D. 1923.

(Sgd.) Francis Beidler.

Signed, published and declared by the said testator, Francis Beidler, as and for his Last Will and Testament, on this 27th day of February, A. D. 1923, in our presence, and we, thereupon, at his request and in the presence of [fol. 24] each other, hereunto subscribed our names as attesting witnesses to said Will and Testament.

(Sdg.) Lewis L. McArthur, M. D. Residence: 4724 Drexel Boulevard. (Sgd.) Jas. P. Soper. Residence: 4841 Greenwood Ave. (Sgd.) Nellie D. Cross. Residence: 6555 Langley Ave., Chicago, Ill.

Will proved and admitted to record in open court this 28th day of January, A. D. 1925.

Henry Horner, Probate Judge.

[fol. 25] EXHIBIT "A"

Issue I

Contract Between Santee River Cypress Lumber Co. and Brooklyn Cooperage Co. with Guarantee of American Sugar Refining Company.

STATE OF SOUTH CAROLINA:

This Agreement, entered into by and between the Santee River Cypress Lumber Co., a corporation organized under the laws of the State of South Carolina, party of the first part, and Brooklyn Cooperage Company, a corporation organized under the laws of the State of New York, party of the second part:

Witnesseth:

Whereas, the party of the first part is the owner of certain tracts of land hereinafter described, located in the State of South Carolina with growing timber thereon, and the party of the second part is desirous of leasing said tracts with the privilege of cutting and marketing said timber;

Now, Therefore, it is Agreed, by and between the parties hereto, in consideration of the premises and the payments of the several sums hereinafter stipulated;

First. The party of the first part leases, and now does let and demise unto the party of the second part, with the right of cutting and marketing all the timber located thereon, or that be thereon at any time during the cutting period, which the party of the second part hereby agrees to take, and does take, with the right of cutting and marketing all [fol. 26] the timber located thereon, or that may be thereon at any time during the cutting period; the following described property, to wit:

(Then follows the descriptions of 69 tracts of land all in South Carolina.)

Second. To have and to Hold the same for a period of twenty (20) years, beginning with the 4th day of November, 1920, and ending with the 4th day of November, 1940, with an option to the party of the second part for an additional period not exceeding twenty (20) years beginning with the 5th day of November, 1940. The rental payments made during the first period of twenty (20) years, as hereinafter provided, shall be the consideration, without further payments, excepting taxes, for the rental during the second period not exceeding twenty (20) years, in the event party of the second part exercises the option granted herein and notifies the party of the first part of its intention so to do with the number of years extension desired, such notification shall be in writing and shall be made prior to the expiration of the first period of twenty (20) years. All the rights granted by the party of the first part and obligations assumed by the party of the second part, are to extend during the second period of not exceeding twenty (20) years, if the option provided in this section is exercised. The party of the second part covenants to surrender said premises at the expiration of said lease, which includes option period if exercised, without further demand and notice, in good order and condition and in all respects as contemplated herein, with all trackage, building and construction work removed therefrom,—any damage done by overflow of the Santee River excepted.

Third. The party of the second part agrees to pay to the party of the first part, as rent for said premises, and for the right to cut and market all timber thereon, for the [fol. 27] period named herein, including the option period of twenty (20) additional years, if exercised, the total sum of Four Million Eight Hundred Fifty-five T-ousand and Three Hundred Forty-three Dollars and Twenty Cents ($4,855,343.20) in the following manner to wit:

Twenty-five Thousand Dollars ($25,000.00) shall be paid on the execution of this contract as a first installment, the receipt whereof is acknowledged; the sum of Sixty Thousand Three Hundred Seventy-nine dollars and Twenty-nine Cents ($60,379.29) shall be paid on January 1st, 1921, and a like sum thereafter shall be paid each succeeding three calendar months until eighty (80) such payments including payment due January 1st, 1921, shall have been made. All

payments shall be made to the party of the first part at the place it may designate in writing and shall be free of exchange in New York or Chicago.

Fourth. It is Understood and Agreed by and between the parties hereto, that no timber shall be cut or removed until six of said quarterly payments shall have been paid, at which time there shall inure the right, and the party of the second part shall be entitled to cut and remove all the standing, cut or fallen timber in and upon seven hundred and fifty (750) acres of said tract or tracts, and that under no circumstances shall the timber be cut or removed from any more acreage than referred to above until there has been paid the seventh quarterly rental of Sixty Thousand Three Hundred Seventy-nine Dollars and Twenty-nine Cents ($60,379.29) at which time the party of the second part shall be entitled to cut and remove all the standing, cut or fallen timber on an additional seven hundred and fifty (750) acres of said tract or tracts, and thereafter as each quarterly rental is paid, said party of the second part shall be entitled to cut and remove all the timber upon an additional seven hundred and fifty (750) acres of said land, [fol. 28] until the last and final payment is made, when said party of the second part shall be entitled to cut and remove all the remaining timber on said tracts. Provided, however, that if the party of the second part desires to cut over any more acreage than has been covered as aforesaid in the quarterly payments, it may by paying not more than four quarterly payments at one time in any one calendar year, in addition to the regular quarterly payments, cut over the corresponding acreage called for as above by quarterly payments, and provided further that party of the second part will have the right to anticipate any one or all of the first six quarterly payments. Said party of the second part shall make every effort to cut the timber so that the amount of timber cut during any one quarterly period will bear the same relationship to the acreage cut over as the total acreage in all the tracts bears to the total amount of timber on said tracts.

Fifth. The party of the second part further covenants not to sell, cut or remove any of the timber from said tracts, until the rent, as provided in said Sections third and fourth,

and all other provisions herein referred to shall have been fully complied with.

Sixth. That to more accurately arrive at the rights and interests of the parties hereto, the party of the first part reserves the right to make a survey of the tracts leased herein or any part thereof and the timber thereon every quarter throughout the entire term, at its own expense. In the event of a dispute between the parties as to the amount of acreage cut over during any period and the average stand of timber removed therefrom, the differences shall be adjusted by each party appointing an arbitrator. If the two arbitrators so appointed, fail to agree, the arbitrators may select a third party and the decision of a ma- [fol. 29] jority of the three arbitrators so appointed and selected shall be binding upon both parties, and the expense, if any, of such arbitration shall be equally divided between both parties. But in no event shall the quarterly payments hereinbefore provided be delayed or abated and any additional payment made to party of the first part as a result of the findings of such arbitrators in any one quarter shall be applied as an offset or part payment of the rental due and payable at the nearest quarterly payment then to become due and the amount of acreage applicable to such quarterly payment as hereinbefore stated correspondingly reduced, provided this will in no way interfere with party of the second part anticipating payments as provided for above.

Seventh. In furtherance of the objects and purpose of this agreement the parties further stipulate that the party of the second part may have access to any and all portions of the said tracts leased herein, build such roads, railroads, and ways, buildings and such other construction as it may deem necessary in its logging operations, including the right to use steam skidders, tractors or any other method it may see fit or deem necessary to remove the timber from said lands. And the parties further stipulate that after a tract has been once cut over and the timber removed therefrom pursuant to the covenants contained herein, the party of the second part shall not again enter upon said tract at any time thereafter for the purpose of cutting or removing any more timber therefrom. It is understood, however, that this does not preclude party of second part from using such

cut over lands for rights of way, buildings of for other purposes in its logging operations, provided taxes are paid as provided for in Section Ten.

Eighth. It shall be the duty of the party of the second part not to commit or permit waste or permit the standing [fol. 30] or cut timber to be stolen or damaged in any manner whatsoever on the tracts which have not been cut over. It being understood that this provision will not be enforced against the party of the second part except in the event of default of payments or breach of other covenants herein. It is also understood and agreed that the party of the second part will not be responsible for any waste or damage caused by act of God or the public enemy.

Ninth. Subject to the unexpired hunting and fishing rights granted by the party of the first part to others, which the party of the first part will not renew, and also subject to any and all reservations made by predecessors in ownership, the party of the first part gives the party of the second part the exclusive right to hunt and fish on the tracts leased herein during the term of this lease and covering all tracts from which the timber has not been removed. This right being granted as an incident to this lease and subject to all its terms and provisions.

Tenth. It is Agreed that the party of the second part will pay, or cause to be paid, all taxes and assessments that may be levied, charged or assessed on or against said tracts or against the party of the first part for the tracts leased herein by the State of South Carolina, or any subdivision thereof, pending the existence of this lease. If at any time after such taxes or assessments shall have become due and payable the party of the second part shall neglect to pay the same, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed so much additional and further rent for the above demised tracts due from and payable by the party of the second part at the nearest quarterly payment then to become due. It is agreed, however, that as much as each [fol. 31] tract is cleared of timber pursuant to the terms hereof, the party of the second part shall be relieved of the proportion of such taxes applicable thereto, or the

charges for taxes as to such tracts which shall be levied or assessed during the years succeeding the calendar year in which such tract is so cleared of timber, except that the party of the second part must pay taxes and assessments on so much of said cleared lands as are used for roadways and buildings or in any other way by it in its logging operations. Taxes due during the year 1920 on the tracts leased herein are to be paid by the party of the first part.

Eleventh. Subject to the joint right of enjoyment of the riparian rights and uninterrupted and unobstructed navigation of the Santee River, the party of the first part lets unto the party of the second part, as an incident to the terms herein, the riparian rights adjacent to the lands leased herein along the said Santee River which the party of the first part now enjoys, but only in-so-far as such rights may by the party of the second part be deemed necessary for it in connection with the cutting, removing and transporting of the timber from said tracts.

Twelfth. The party of the first part warrants the title to the lands leased herein and to the growing timber thereon and agrees to defend the same against all parties, without cost to the party of the second part, in any and all suits or other actions assailing the title to said tracts or to said timber, and to institute and carry on, at its expense, any litigation necessary to give the party of the second part free and undisturbed possession as contemplated by this agreement. In the event that title to any part of these lands is determined to be so defective as to deprive the party of the second part of the right to cut and market any of the timber from any tract leased herein, the party [fol. 32] of the first part will reimburse the party of the second part for any amount paid as rent or relieve party of the second part of any payments to be paid as rental for the particular tract and/or tracts involved; provided, however, that if the timber on the tract or tracts to which title is found to be defective has been fully or partially removed by party of second part, and party of first part is called upon to answer in damages for the timber so removed, the party of second part shall reimburse party of first part in an amount equal to the value of such timber so removed less cost of marketing.

Thirteenth. This lease shall not be assigned, or the property leased herein sublet, in whole or in part, except on written notice to the party of the first part and unless the payments and covenants provided for herein are guaranteed by the party of the second part, and when such assignment is made the party of the first part will be obliged only to look to the party of the second part for the performance of the covenants herein.

Fourteenth. Should the agencies of the State or Federal Government, upon their own initiative, undertake to restrict or control the rights of the parties hereto in respect to cutting the quantity or kind of timber herein, or if any agency of the State or Federal Government otherwise interferes with the performance of this lease, ~~then~~ said parties shall accordingly readjust and revise their mutual interests and obligations hereunder, and should they be unable to arrive at an agreement, then such questions which are in dispute shall be submitted to arbitrators as provided by Section Sixth herein.

Fifteenth. In the event of forest fires, not due to the negligence of the party of the second part, the loss and damage to the timber on the tracts will be apportioned be- [fol. 33] tween the parties, using as a basis the same ratio as the equities of the parties in the entire tracts and timber thereon may appear at the time of the forest fire. In determining the amount of the loss the acreage and the amount of timber lost or damaged shall be considered. In the event of a dispute as to the amount of the loss or how same shall be apportioned between the parties, such questions as are in dispute shall be submitted to arbitrators as provided by Section Sixth herein.

Sixteenth. In the event that the party of the second part fails to make any of the rental payments as provided for herein within thirty (30) days after the party of the first part has notified the party of the second part of the failure to pay the amount due, or if any of the covenants herein are broken by the party of the second part without proper redress being made, or if said timber or any part thereof shall be claimed or attached, or levied upon by execution or claim by any other person or persons upon any pretense whatever before said rent shall be fully paid, pro-

viding said claim does not arise out of some obligation of first party, and the party of the second part does not give an approved bond to protect the party of the first part, then upon the happening of any one of said contingencies said rent shall immediately become due and payable at the option of said party of the first part and the said party of the first part shall have the right to enter in and upon said premises and to take possession of the same together with the timber thereon, or wherever the same may be found, and remove and sell the same or any part thereof at private or public sale and apply the proceeds thereof to the payment of the expense and cost of carrying out the provisions of this lease and the payment of said rent hereby reserved; provided, however, that no breach of the covenants herein contained, except that for the payment of [fol. 34] rent, shall give to the party of the first part any right of re-entry unless or until judgment shall have been obtained in an action for breach of covenant.

It is further agreed by the parties hereto, that after the serving of notice, or the commencement of a suit, or after final judgment for possession of said premises, the party of the first part may receive and collect any rent due, and the payment of such rent shall not waive or affect such notice, said suit or judgment.

The party of the second part further covenants and agrees to pay and discharge all reasonable costs, attorneys' fees and expenses that shall be made and incurred by the party of the first part in enforcing the covenants and agreements of this lease with reference to the rental payments; and all of the reasonable costs, attorneys' fees and expenses in any suit brought by the party of the first part to enforce any of the other covenants of this lease, providing the party of the first part is successful in maintaining a judgment for breach of said covenants.

Seventeenth. All of the parties to this lease agree that the covenants and agreements herein contained shall be binding upon, apply and inure to their respective successors, representatives or assigns.

In Witness Whereof the party of the first part has caused these presents to be duly signed by its President and Vice-President, and the party of the second part by its

President, and duly attested by the respective secretaries of said parties and their Corporate Seals hereunto affixed in duplicate this 19th day of November, A. D. 1920.

Santee River Cypress Lumber Co. Francis Beidler, President. George Engelking, Vice-President.

[fol. 35] Signed, Sealed and Delivered in the presence of Frank Stevenson, Ethel M. Dwyer.

Attest: M. B. Cross, Secretary. (Seal.)

Brooklyn Cooperage Company. R. M. Parker, President.

Signed, Sealed and Delivered in the Presence of Thomas A. Sullivan, A. F. Abbot.

Attest: Edwin T. Gibson, Secretary. (Seal.)

(The foregoing contract is duly probated and recorded.)

I, Edwin T. Gibson, Secretary of the Brooklyn Cooperage Company, certify that the following is a true and correct copy of a resolution adopted by the Board of Directors of the Company, in meeting held on November 17, 1920, at 117 Wall Street, New York City, at which there was a quorum present:

"Whereas, the officers of the Company have reported a proposed contract with the Santee River Cypress Lumber Company for leasing certain lands of that Company in the State of South Carolina, with the right to cut and remove all of the timber thereon,

"Resolved, that the officers of the Company be and they hereby are authorized to enter into said contract and to execute same on behalf of the Company."

[fol. 36] In Witness Whereof, I have hereunto attached my hand and the official seal of the Company this 19th day of November, 1920.

(Signed) Edwin T. Gibson, Secretary. (Seal.)

Whereas, the Brooklyn Cooperage Company, a corporation of New York, proposes to lease from Santee River Cypress Lumber Co., a South Carolina corporation, certain timber lands with the right of cutting and removing timber

therefrom, for the period of twenty (20) year- beginning November 4th, 1920, with an option to extend said lease for an additional period not exceeding twenty (20) years, said lease providing for a total rental, in addition to taxes, of Four Million Eight Hundred Fifty-five Thousand Three Hundred Forty-three Dollars and Twenty Cents ($4,855,-343.20); and

Whereas, The American Sugar Refining Company owns all the Capital Stock of the Brooklyn Cooperage Company, and the timber to be cut on said lands by virtue of said lease will be used principally in the business of The American Sugar Refining Company;

Now, Therefore, Be it

Resolved, that The American Sugar Refining Company guarantee to said Santee River Cypress Lumber Co., the prompt payment by said Brooklyn Cooperage Company, at all times during the term of said lease, the rent reserved in and by said lease and of all other payments which said Brooklyin Cooperage Company is required to make under the terms of said lease;

Further Resolved, that the President, or Vice President, and Secretary of this Company, be and they are hereby [fol. 37] authorized to execute under the corporate seal of this Company, and to deliver to said Santee River Cypress Lumber Company an instrument of guaranty embodying the terms of the foregoing resolution.

I, Edwin T. Gibson, Secretary of The American Sugar Refining Company, a corporation of New Jersey, do hereby certify that the foregoing is a true, perfect and complete copy of a resolution duly adopted by the Executive Committee of said corporation at a regular meeting held on the 17th day of November, 1920; that said meeting was duly convened and held according to law and the by-laws of said corporation; that a quorum of said Committee was there present and voted in favor of said resolution, and that said resolution still remains in full force and effect. All of which appears from the records of said corporation now remaining in my custody and control.

Witness my hand and the corporate seal of said The American Sugar Refining Company, this 19th day of November, 1920.

(Signed) Edwin T. Gibson, Secretary. (Seal.)

For and in Consideration of the sum of One Dollar (1.00) and other good and valuable considerations to the undersigned, The American Sugar Refining Company, in hand paid, the receipt whereof is hereby acknowledged, the said The American Sugar Refining Company hereby guarantee to Santee River Cypress Lumber Company the lessor in a certain lease to the Brooklyn Cooperage Company, as lessee, of certain timber lands in the State of South Carolina for a term of twenty (20) years beginning November 4th, 1920, and containing an option to said lessee to extend the same for a further period not exceeding twenty (20) years, a copy of said lease being attached hereto and made a part hereof, the prompt payment by said lessee at all times during the [fol. 38] term of said lease of the rent reserved and of all other payments to be made by said lessee under the terms of said lease.

In Witness Whereof said The American Sugar Refining Company has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed and attested by its Secretary, this—Nineteenth day of—November, 1920.

(Signed) The American Sugar Refining Company,
by R. M. Parker, Vice-President.

Attest: (Signed) Edward T. Gibson, Secretary. (Seal.)

The American Sugar Refining Company, 117 Wall Street, New York

November 19, 1920.

Santee River Cypress Lumber Co., Eutawville, S. C.

Dear Sirs: The attached guaranty has been executed by The American Sugar Refining Company, subject to the Santee River Cypress Lumber Co. furnishing to the Brooklyn Cooperage Company, within ten days from this date, a certified copy of the resolutions of the Board of Directors of the Santee River Cypress Lumber Co., ratifying the action of its officers in entering into and executing the contract of lease with the Brooklyn Cooperage Company, dated November 4th, 1920.

Very truly yours, The American Sugar Refining Company. (Signed) Edwin T. Gibson, Secretary.

[fol. 39] Brooklyn Cooperage Company, 117 Wall Street, New York

Cable Address: Parbrook, New York

November 19, 1920.

Santee River Cypress Lumber Co., Eutawville, S. C.

Dear Sirs: The attached contract has been executed by the Brooklyn Cooperage Company, subject to Santee River Cypress Lumber Co., furnishing Brooklyn Cooperage Company, within ten days from this date, a certified copy of the resolutions of the Board of Directors of the Santee River Cypress Lumber Co. furnishing Brooklyn Cooperage Company, within and executing the attached contract.

Very truly yours, Brooklyn Cooperage Company.
(Signed) Edwin T. Gibson, Secretary.

Eutawville, S. C., November 23rd, 1920.

The Brooklyn Cooperage Co., No. 117 Wall Street, New York, N. Y.

Dear Sirs: Referring to your letter dated Nov. 19th, 1920, and the contract of lease executed by you dated Nov. 4th, 1920, the execution of which according to said letter was predicated upon our furnishing you within ten days from Nov. 19th, 1920, a certified copy of the resolution of our Board of Directors ratifying the action of our officers in entering into an execution said contract of lease; we enclose the original certified copy of resolution passed by our [fol. 40] Board of Directors and adopted by them on Nov. 22nd, 1920, the duplicate original of which we are today mailing by registered mail to The American Sugar Refining Co.

Yours very truly, Santee River Cypress Lumber Co.,
by M. B. Cross, Secretary.

MBC/D.

Eutawville, S. C., Nov. 23rd, 1920.

The American Sugar Refining Co., No. 117 Wall Street, New York, N. Y.

Dear Sirs: Referring to your letter dated Nov. 19th, 1920, and the instrument of guarantee referred to therein dated

19th day of November, 1920, the execution of which as stated in said letter was predicated upon our furnishing to the Brooklyn Cooperage Company, within ten days from Nov. 19th, 1920, a certified copy of the resolutions of our Board of Directors ratifying the action of its officers in entering into and executing the contract of lease with the Brooklyn Cooperage Co. dated Nov. 4th, 1920; we enclose herewith a duplicate original certified copy of resolutions passed by our Board of Directors on Nov. 22nd, 1920, the original of which we are this day mailing by registered mail to the Brooklyn Cooperage Company.

Yours truly, Santee River Cypress Lumber Co., by M. B. Cross, Secretary.

MBC/D.

[fol. 41] "Whereas, at a meeting of the Board of Directors of this Company held on the 8th day of May, 1920, the President and Vice-President and Secretary were authorized to enter into a contract or agreement for the leasing of the properties of the Company in the Counties of Sumter, Clarendon, Williamsburg, Calhoun and Orangeburg in the State of South Carolina with a right on the part of the lessee to cut and remove the timber therefrom; and

"Whereas, pursuant to such authority the President, Vice-President and Secretary have, on behalf of this Company executed and delivered a lease to Brooklyn Cooperage Company, a New York corporation, of certain of said properties for a term of twenty (20) years beginning on the 4th day of November, 1920, with the option to said lessee of extending the same for an additional term not to exceed twenty (20) years, at a total rental of Four Million Eight Hundred Fifty-five Thousand and Three Hundred Forty-three Dollars and Twenty Cents ($4,855,343.20) payable Twenty-five Thousand Dollars ($25,000.00) on the execution of said lease and thereafter in eighty (80) quarterly payments of Sixty Thousand Three Hundred Seventy-nine Dollars and Twenty-nine Cents ($60,379.29) each, beginning January 1st, 1921, which said lease has been submitted to this meeting;

Now, therefore, be it

"Resolved that the action of said officers in executing and delivering said lease be and the same is hereby ratified, approved and confirmed."

I, M. B. Cross, Secretary of the State River Cypress Lumber Co., a corporation of South Carolina, do hereby certify that the foregoing is a true, perfect and complete [fol. 42] copy of a resolution duly adopted by the Board of Directors of said corporation at a regular meeting held on the 22nd day of November, 1920; that said meeting was duly convened and held according to law and the by-laws of said corporation; that a quorum of said Board of Directors was there present and voted in favor of said resolution and that said resolution still remains in full force and effect. All of which appears from the records of said corporation now remaining in my custody and control.

Witness my hand and the corporate seal of said Santee River Cypress Lumber Company, this 23rd day of November, 1920.

M. B. Cross, Secretary.

[fol. 43] EXHIBIT "B"

Issue I

Affidavit of M. B. Cross

STATE OF SOUTH CAROLINA,
County of Aiken:

Personally appeared M. B. Cross, who being duly sworn, says that he is 52 years of age, that he resides at Eutawville, in Orangeburg County, South Carolina, and that he is the General Manager of the Santee River Cypress Lumber Company, with which corporation a contract for the purchase of a very large quantity of timber was made some years ago by the Brooklyn Cooperage Company, the performance of which by said Brooklyn Cooperage Company, and the payment of the purchase price of which timber was guaranteed by the American Sugar Refining Company.

That at the time said contract was made, deponent looked into the question of the solvency and ability of both of said

Companies, their acting together, or separately to pay the purchase price of said timber, and then became thoroughly convinced that both of said corporations were exceedingly wealthy and were abundantly able to pay for said timber. It is however a fact that for the purpose of determining said matter beyond all question, this deponent has, during the latter part of August and the first part of September, 1925, visited much of the property owned by the two corporations, and has made a careful estimate of the worth of the property owned by said corporations so inspected by him.

That it is a fact the American Sugar Refining Company is one of the largest sugar producing concerns in America, and that the Brooklyn Cooperage Company is a subsidiary corporation of said American Sugar Refining Company, and that the Brooklyn Cooperage Company owns and [fol. 44] operates numerous plants and factories, at which barrels and cartons are manufactured for the American Sugar Refining Company for the purpose of packing and shipping sugar and syrup therein.

That deponent feels that he is capable of forming for all practical purposes an accurate estimate, approximately speaking, of the value of a manufacturing plant, and particularly of a plant dealing in the manufacture of wood products, such as barrels, as he has spent practically all his whole life in such plants, and in the management of the same, and has had a great deal of experience in the purchasing of machinery. That he also feels that he is entirely capable upon inspecting a building, whether the same be constructed of wood or brick to determine its value on account of the fact that in his business experience he has frequently bought and used such material in large quantities. That he has managed large plants, and had much experience along the lines above indicated in Alexander, West Va., Whaleyville, West Va., and Ferguson, S. C.

As hereinbefore stated, deponent has just returned from an inspection tour of the properties of the American Sugar Refining Company and of the Brooklyn Cooperage Company in New York, Brooklyn, the Adirondacks Mountains, in New York, in Boston, in Philadelphia and in Baltimore, and gives the following as his observations most carefully made. That in each instant he went over the properties in

question with great care, inspected them in a painstaking manner, and as a result of such visit, states the following facts and estimates as matters within his own personal knowledge, to wit:

New York

In New York City:

The American Sugar Refining Company owns a five story brick Office Building, situated at 117 Wall Street, fronting [fol. 45] about 100 feet on Wall Street and 100 feet on South Street and comprising an important corner at the intersection of Wall and South Streets. This building is used exclusively by the American Sugar Refining Company and its subsidiaries for offices. A conservative estimate of the value of this building is $750,000.00.

In Brooklyn, New York:

The Brooklyn Cooperage Company owns and operates on Kent Avenue extending back to East River a four story brick cooperage assenbling, paper cartons, printing and cutting plant, fully equipped to manufacture 12,000 sugar barrels and 3,000 syrup barrels per day, together with three heavy carton printing and cutting machines, with two high speed carton gluers and folders, with thirteen dry kilns, boilers, etc., employing when working full time 240 workmen. Size of building 200 feet by 500 feet, exclusive of wharves. Brooklyn Cooperage Company carries in stock at this building out of its raw material sufficient to make 150,000 barrels, and also carries on an average 60,000 barrels already made up. I estimate the value of this building, equipment and stock as being undoubtedly worth $475,000.00.

In addition thereto the Brooklyn Cooperage Company owns on the opposite side of Kent Avenue another building of the same size and capacity as the above, and which is fully equipped for operation, but which is at present being used for storage purposes. This building is well worth $125,000.00.

The American Sugar Refining Company owns and operates on Kent Avenue between South, First Street and South 5th Street a huge plant including wharves. Also five build-

ings on the opposite side of Kent Avenue. This is one of the largest and oldest sugar refining establishments in America. The buildings are entirely brick, ranging from [fol. 46] two to ten stories high and the refinery has a capacity of four million pounds of refined sugar per day of 24 hours. Eighteen hundred workmen are employed in this plant, and it is well worth $5,000,000.00.

In the Adirondacks:

I visited the holdings of the Brooklyn Cooperage Company in the Adirondacks where they own 38,000 acres of timbered and cut over land in the vicinity of Saranac Lake. Some of this property has been cut over, much of which has been re-forested with spruce and white pine saplings. Much of said timber is in a virgin condition. This property is well worth $150,000.00.

Massachusetts

In Boston:

At South Boston, Mass. the Brooklyn Cooperage Company own and operate a three story brick building on C Street, which is equipped and used for the manufacture of wooden sugar barrels. They employ 75 workmen, and have a capacity of 2,500 sugar barrels per day. At this plant is located two high speed automatic carton gluing machine. This property is well worth $100,000.00.

The American Sugar Refining Company owns and operates a plant about three blocks distant from the Brooklyn Cooperage Company's plant, the same being a sugar refinery, which extends along Racine Street about 1,200 feet, back to South Bay. This building ranges from three to ten stories high, is fully equipped with machinery to refine 2,250,000 lbs. of sugar per day, employing from 1,000 to 1,200 men per day. Across the street they have a brick warehouse, stables and garages. The total valuation of this plant of the American Sugar Refining Company is, in my opinion, $2,500,000.00.

[fol. 47] Pennsylvania

In Philadelphia:

The American Sugar Refining Company's plant, known as the Franklin Refining Plant is situated at the foot of

Reed Street, Philadelphia. This plant consists of several connected brick buildings, is very extensive and up-to-date, and has a capacity of 3,000,000 lbs. of sugar per day, and employs 1,100 workmen. They have most modern machinery, and their docks and wharves are newly built and covered. This is a magnificent plant, and is in my opinion worth at least $4,500,000.00.

The Brooklyn Cooperage Company owns and operates a building in the same vicinity and adjacent to the property of the American Sugar Refining Company's plant just described, which is a three story brick building, approximately 150 feet by 250 feet in size. This building is fully equipped, has six large dry kilns, and is equipped to manufacture 2,500 sugar barrels per day. They also own and operate two large carton, printing and cutting machines and two high speed carton glue and folding machines, and carry 25,000 completed barrels in stock and raw material to make 75,000 barrels at all times. I estimate that the holdings of the Brooklyn Cooperage Company at Philadelphia is well worth $150,000.00.

Maryland

In Baltimore:

The Brooklyn Cooperage Company owns and operates a very complete plant on East Key Highway. This plant was constructed in 1921 and 1922, and is entirely modern. The building is constructed in two sections, all of brick, the first section being the assembly room for setting up barrels. This is 72 feet by 140 feet, one story high, equipped with machinery to manufacture 5,000 sugar barrels and 500 [fol. 48] syrup barrels per day. The other section is a warehouse of the same size, but is two stories high. In this building all raw material and finished barrels are kept. They carry raw material for 100,000 barrels and an average of 30,000 finished barrels in stock. This plant is equipped with six latest dry kilns. In my opinion, the holdings of the Brooklyn Cooperage Company in Baltimore is well worth $200,000.00. The American Sugar Refining Plant of Baltimore is a large and massive concern, covering about five acres of ground with large wharves extending therefrom, is built entirely of brick, averaging seven stories,

some buildings being as high a 12 stories, and is fully equipped with the latest improved sugar refining machinery and equipment. I estimate the value of this plant is at least $10,000,000.00.

The following is a recapitulation of the values observed by me of the two concerns:

	Brooklyn Cooperage Co.	American Sugar Refg. Co.
New York	$750,000.00	$5,750,000.00
Massachusetts	100,000.00	2,500,000.00
Pennsylvania	150,000.00	4,500,000.00
Maryland	200,000.00	10,000,000.00
	1,200,000.00	22,750,000.00

I would say that in arriving at my estimation of the values above set out, I have taken not only my own ideas, (which in the last analysis, however, have controlled my estimates), but that I have also talked with and consulted many other people, whose opinions would be of value in arriving at said estimates, such as the Superintendents and General Managers of the Plants in question, machinery experts, real estate men and timber and lumber experts. I am satisfied that in each instance that the estimates given [fol. 49] are entirely conservative, and that if there is any error, the error is one of under-valuation.

M. B. Cross.

Sworn to before me this 10th day of September, 1925. H. R. Ashhurst, Notary Public for S. C. (L. S.)

[fol. 50] EXHIBIT "C"

Issue I

Provisions of New York Civil Practice Act Submitted

Article 54

Attachment; When Allowed; Obtaining Warrant

902. In What Actions Attachment of Property May be Had.—

A warrant of attachment against the property of one or more defendants in an action may be granted upon the application of the plaintiff, as specified in the next section, when the action is to recover a sum of money only, as a tax, or as damages for one or more of the following causes:

1. Breach of contract, express or implied, other than a contract to marry.

2. Wrongful conversion of personal property.

3. An injury to person or property in consequence of negligence, fraud or default by which the decedent's death was caused, when the cause of action arose in this State before or after the passage of this act and the action is brought by an executor or administrator against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued.

903. What Must be Shown to Procure Warrant of Attachment.—

To entitle the plaintiff to such a warrant, he must show that a cause of action specified in the last section exists [fol. 51] against the defendant, and, if the action is to recover damages for breach of contract, that the plaintiff is entitled to recover a stated sum, over and above all counterclaims known to him. He must also show that the defendant—

1. Is either a foreign corporation or not a resident of the state; or

2. If a natural person and a resident of the state, has departed therefrom with intent to defraud his creditors or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or

3. If a natural person or domestic corporation, has removed or is about to remove property from the state with intent to defraud his or its creditors, or has assigned, disposed of or secreted, or is about to assign, dispose of or secret property with the like intent or if the defendant is a domestic corporation that no person can be found within the state after diligent effort, upon whom a summons can be served; or

4. Has made a false statement in writing, under his own hand or signature, or under the hand or signature of a duly authorized agent made with his knowledge and ac-

quiescence, as to his financial responsibility or standing, for the purpose of proceuring credit or the extension of credit; or

5. If an adult and a resident of the state, has been continuously without the state for more than six months next before the granting of the order of publication of the summons against him and has not made the designation, providing for by statue, of a person upon whom to serve a summons in his behalf, or a designation so made no longer [fol. 52] remains in force, or service upon the person so designated cannot be made, within the state after diligent effort.

916. Levy Upon Cause of Action, Evidence of Debt or Claim to Estate.—

The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the state; which belongs to the defendant and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby. The attachment may also be levied upon a right or interest, present or future, to any of the property or estate of a deceased person which may belong to the defendant and which could be legally assigned by him as legatee or distributee, whether the same exists by reason of the provisions of a last will and testament admitted to probate at the time the attachment is granted, or by operation of the law in case of the intestacy of the deceased. Levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the rights and interests of the defendant at the time of such levy, subject to the rights of the executor, administrator or trustee of such estate to administer the same according to law.

[fol. 53] 917. Method of Making Levy.—

A levy under a warrant of attachment must be made as follows:

1. Upon real property, by filing with the Clerk of the County where it is situated, a notice of the attachment, stating the names of the parties to the action, the amount of the plaintiff's claim, as stated in the warrant, and a description of the particular property levied upon. The notice must be subscribed by the plaintiff's attorney, adding the office address; and must be recorded and indexed by the Clerk, in the same book, in like manner and with like effect as a notice of the pendency of action.

2. Upon the personal property capable of manual delivery, including a bond, promissory note, or other instrument for the payment of money, by taking the same into the Sheriff's actual custody. He thereupon, without delay, must deliver to the person from whose possession the property is taken, if any, a copy of the warrant and of the affidavits upon which it was granted.

3. Upon other personal property, by leaving a certified copy of the warrant, and a notice showing the property attached, with the person holding the same; or, if it consists of a demand, other than specified in the last subdivision, with the person against whom it exists; or, if it consists of a right or share in the stock of an association or corporation, or interests or profits thereon, with the president, or other head of the association or corporation, or the secretary, cashier, or managing agent, thereof, or if it consists of a right or interest in an estate of a deceased person arising under the provisions of a will or [fol. 54] under the provisions of law in case of intestacy, with the executor or trustee under the will, or the administrator of the estate.

4. Upon property discovered in any action brought as prescribed in subdivision two of section nine hundred and twenty-two of this Act, by entering in the proper Clerk's office the judgment rendered in said action, and thereafter levying on said property in the manner prescribed in subdivisions one, two and three of section.

922. Actions and Special Proceedings by Sheriff.—

7. The Sheriff, subject to the direction of the Court or Judge, must collect and receive all debts, effects and things in action, attached by him. He may maintain any action or special proceeding, in his name or in the name of the

defendant, which is necessary for that purpose or to reduce to his actual possession an article of personal property, capable of manual delivery, but of which he has been unable to obtain possession. He may discontinue such an action or special proceeding at such time and on such terms as the Court or Judge directs.

2. Where the summons was served without the state, or by publication, pursuant to an order obtained for that purpose, as prescribed by law, and where the defendant has not appeared in the action, otherwise than specially, but has made default and before entering final judgment, the Sheriff, in aid of such attachment, may maintain an action against the attachment debtor and any other person or persons, or against any other person or persons, to compel the discovery of any thing in action, or other prop- [fol. 55] erty belong to the attachment debtor; and of any money, thing in action, or other property due to him, or held in trust for him, or to prevent the transfer thereof, or the payment or delivery thereof, to him or any other person, and the Sheriff, in aid of such attachment, also may maintain any other action against the attachment debtor and any other person or persons, or against any other person or persons, which may now be maintained by a judgment creditor in a Court of Equity, either before the return of an execution in aid thereof, or after the return of an execution unsatisfied. The judgment in any of the above mentioned actions must provide and direct that the said property shall be applied by the Sheriff to he satisfaction of any judgment which the plaintiff may obtain in the attachment action.

940. Sheriff to Keep Property.—

The Sheriff must keep the property attached by him, or the proceeds of property sold or of a demand collected by him, to answer any judgment that may be obtained against the defendant in the action.

941. Order for Payment Into Court or Deposit of Money.—

The Court, upon the application of either party to the action, may direct the Sheriff, either before or after the expiration of his term of office, to pay into Court the pro-

ceeds of a demand collected or property sold; or to deposit them in a designated bank or trust company, to be drawn out only upon the order of the Court.

942. Delivery or Release of Surplus Money or Property.—

Where the proceeds of the property sold, and the demands collected by the Sheriff, exceed the amount of the [fol. 56] plaintiff's demand, with the costs and expenses, and of all other warrants of attachment or executions in the Sheriff's hands chargeable upon the same; the Court, or the Judge who granted the warrant, upon the application of the defendant, or of an assignee of, or purchaser from the defendant, and upon notice to the plaintiff and the plaintiffs in the other warrants or executions, may make an order, at any time during the pendency of the action directing the Sheriff to pay over the surplus to the applicant and to release from the attachment the remaining real and personal property attached.

943. Action by Plaintiff and Sheriff Jointly.—

The plaintiff, by leave of the Court or Judge, procured as prescribed in the next section, may bring and maintain, in the name of himself and the Sheriff jointly, by his own attorney, and at his own expense, any action, which, by the provisions of this Act, may be brought by the Sheriff, to recover property attached, or the value thereof, or a demand attached, or upon an undertaking given as prescribed in this article, by a person other than the plaintiff; the plaintiff, in his own name and the Sheriff's jointly, may also bring and maintain any action which, by the provisions of subdivision two of section nine hundred and twenty-two of this Act, may be brought by the Sheriff. The Sheriff must receive the proceeds of such an action, but he is not liable for the costs or expenses thereof. Costs may be awarded in such an action against the plaintiff in the warrant, but not against the Sheriff.

968. Execution to Issue to Sheriff Who Has Levied Attachment.—

Where a levy under a warrant of attachment in an action [fol. 57] has been made, an execution against property

upon a final judgment in favor of the plaintiff therein, recovered after the expiration of the term of office of the Sheriff who made the levy, must nevertheless be directed to and executed by that Sheriff, unless another person is designated by law to complete the unfinished business pertaining to his office; or, in that case, to the person so designated.

969. Satisfaction of Judgment from Attached Property—

Where an execution against property is issued upon a judgment for the plaintiff in an action in which a warrant of attachment has been levied, the Sheriff must satisfy it as follows:

1. He must pay over to the plaintiff all money attached by him, and the proceeds of all sales of perishable property, or of any vessel or share or interest therein, or animals sold by him, or of any debts, or other things in action collected or sold by him; or so much thereof as is necessary to satisfy the judgment.

2. If any balance remains due, he must sell under the execution the other personal property attached, or so much thereof as is necessary; including rights or shares in the stock of an association or corporation, or a bond or other instrument for the payment of money, executed and issued, with the interest coupons annexed, if any, by a government, state, county, public officer, or municipal or other corporation, which is in terms negotiable, or otherwise, whether past due, or yet become due; but not including any other debt or thing in action. If the proceeds of that property are insufficient to satisfy the judgment and the execution required him to satisfy it out of any other personal prop- [fol. 58] erty upon which he has levied by virtue of the execution if the proceeds of the personal property applicable to the execution are insufficient to satisfy the judgment, the Sheriff must sell under the execution all the right, title and interest which the defendant had in the real property attached at the time when the notice was filed, or at any time afterwards, before resorting to any other real property.

3. If personal property attached, belonging to the defendant, has passed out of the hands of the Sheriff without having been sold or converted into money, and the at-

tachment has not been discharged as to that property, he must regain possession thereof if practicable; and for that purpose he has all the authority which he had to seize the same under the warrant. A person who willfully conceals or withholds such property from him is liable to double damages at the suit of the party aggrieved.

4. Until the judgment is paid, he may collect the debts and other things in action attached, and prosecute any undertaking, which he has taken in the course of the proceedings, and apply the proceeds thereof to the payment of the judgment.

5. At any time after levying the attachment, the Court, upon the petition of the plaintiff, accompanied with an affidavit specifying fully all the proceedings of the Sheriff since the levy under the warrant, the property attached, and the disposition thereof; and the affidavit of the Sheriff showing that he has used diligence in endeavoring to collect the debts and other things in action attached, and that [fol. 59] a portion thereof remains uncollected, may direct the Sheriff to sell the remaining portion, upon such terms and in such manner as it thinks proper. Notice of the application must be given to the defendant's attorney if the defendant appeared in the action. If the summons was not personally served on the defendant, and he did not appear, the Court may make such order as to the service of notice as it thinks proper, or may grant the application without notice.

[fol. 60] EXHIBIT "D"

Issue I

Provisions of Massachusetts Statutes and Decisions Submitted

Chapter 181—Foreign Corporations

Section 8. Foreign corporations having property in this commonwealth shall be liable to be sued and to have their property attached in the same manner and to the same extent as individuals who are residents of other states and who have property in this commonwealth. The service of

the writ shall be made in the manner provided in Chapters 223 and 227, with such further service as the Court to which the writ is returnable orders.

Ocean Ins. Co. v. Portsmouth Ry. Co., 3 Met., 420.

Chapter 223—Commencement of Actions; Service of Process

Sec. 2. A transitory action in a district Court shall be brought in the county where one of the defendants lives or has his usual place of business, or, if commenced by trustee process, in the county where all persons named in the writ as trustees live or have their usual places of business, and, in either case, in a Court within whose judicial district one of the parties lives or has his usual place of business, except that an action commenced by trustee process may be brought in the municipal Court of the City of Boston if any trustee resides or has his usual place of business in Suffolk County.

Said Courts shall have jurisdiction of a transitory action against a defendant who is not an inhabitant of the commonwealth, if personal service or an effectual attachment of property is made within the commonwealth, and such [fol. 61] action may be brought in any of said Courts in the county where the service or attachment was made.

Forms. Issuing and Return of Writs

Sec. 16. Actions at law, unless founded on scire facias, or other special writs, or unless authorized by statute or by established practice, shall be commenced by original writs. Such writs shall be signed, sealed and bear tests as required by the constitution, and shall be framed either to summon the defendant, with or without an order to attach his goods or estate, or to attach his goods or estate and, for want thereof, to take his body; or, in an action commenced by trustee process, to attach his goods or estate in his own hands and also in the hands of the trustee, original writs shall be in the form heretofore established by law and by the usage and practice of the Courts. If changes in their form are necessary in order to adapt them to changes in the law, or for any other sufficient reason the Courts may make such changes, subject to the final control

of the Supreme Judicial Court, which may by general rule regulate such changes in all the Courts.

Sec. 18. In actions against corporations and in other actions in which property may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate and to summon the defendant.

Attachment of Property, General Provisions

Sec. 42. All real and personal property liable to be taken on execution, except such personal property as, from its nature or situation, has been considered as exempt according to the principles of the common law as adopted and practiced in the commonwealth, and except as provided in the three following sections, may be attached upon the [fol. 62] original writ in any action in which debt or damages are recoverable, and may be held as security to satisfy such judgment as the plaintiff may recover, but no attachment of land shall be made on a writ returnable before a district Court unless the debt or damages demanded therein exceed twenty dollars."

The three following sections deal with:

Sec. 43. Railroad cars, engines and steam boats.

Sec. 44. Declaration to be inserted in writ before attachment of ship or vessel.

Sec. 45. Property of newspaper officers.

Chapter 246—Trustee Process

Commencement and Service of Process

Sec. 1. All personal actions, except tort for malicious prosecution, or slander or libel or for assault and battery, and except replevin, may be commenced by trustee process, and any person may be summoned as trustee of the defendant therein; but an individual who is not an inhabitant of the commonwealth, or a foreign corporation or association, shall not be so summoned unless he or it has a usual place of business in the commonwealth.

Sec. 2. If, in an action, suit or proceeding commenced in the Supreme, Judicial or Superior Court by trustee process, all the persons named in the writ as trustees dwell or have usual places of business in one county, the writ shall be returnable in such county; otherwise it may be returnable in any county where any one of them dwells or has a usual place of business.

Property Liable to Attachment by Trustee Process

Sec. 20. The goods, effects or credits of the defendant intrusted to, or deposited in the hands or possession of, a person summoned as his trustee shall, except as hereinafter provided, be attached and held to respond to the final [fol. 63] judgment, as if they had been attached upon an original writ of attachment.

Sec. 24. Money or any other thing due to the defendant absolutely and without any contingency may be as attached before it has become payable, but the trustee shall not be compelled to pay or deliver it before the time appointed by the contract.

Sec. 43. The judgment against a trustee shall acquit and discharge him from all demands by the defendant, his executor, or administrator, for all goods, effects and credits paid, delivered or accounted for by the trustee by force of such judgment.

Scire Facias against Trustee

Sec. 45. If a person adjudged a trustee does not, upon demand, pay over to the officer goods, effects or credits sufficient to satisfy the execution and if the execution is not otherwise satisfied, the plaintiff may sue out from the Court where the judgment was rendered a writ of scire facias against him, or all, as a separate writ against each of the trustees, to show cause why judgment and execution should not be awarded against them or him and their or his own goods and estate for the amount remaining unsatisfied on the judgment against the defendant. Such writ may be issued by the Court where the judgment was rendered, although the amount of the debt and costs exceeds its jurisdiction.

Sec. 46. If a trustee, duly served with the scire facias, neglects to appear and answer, he shall be defaulted; and if he did not answer, and was not examined in the original action; judgment shall be rendered against him upon such default for the whole amount remaining unsatisfied on the judgment against the defendant.

Sec. 47. If a trustee defaulted on the scire facias has been examined or has answered and not been examined in [fol. 64] the original action, judgment in the scire facias shall be rendered upon the facts stated upon such examination or in such answer, respectively, for any part remaining in his hands of the goods, effects or credits for which he was chargeable as trustee, or for so much thereof as is necessary to satisfy the amount then remaining due on the original judgment.

Sec. 48. If the trustee appears and answers to the scire facias, he may be examined therein; but if he has been examined in the original action, he shall be examined anew only by order of the Court. He may prove any matter necessary or proper for his defense on the scire facias. A judgment against a trustee on scire facias shall express the amount for which he is chargeable.

Sec. 49. A writ of scire facias shall not be maintained against a person adjudged a trustee, unless served upon him within two years after judgment in the original action; or if the money or other thing is not payable when the judgment is rendered, unless so served within one year after such money or other thing becomes payable.

Chapter 227—Proceedings Against Absent Defendants and Upon Insufficient Service

Sec. 1. A personal action shall not be maintained against a person not an inhabitant of the commonwealth unless he or his agent appointed under Section five has been served with process in the commonwealth, or unless an effectual attachment of his property within the commonwealth has been made upon the original writ, and in case of such attachment without such service, the judg-

ment shall be valid only to secure the application of the property so attached to the satisfaction of the judgment.

Sec. 7. If a defendant in an action in the Supreme, Judicial or Superior Court is absent from the commonwealth or his residence is unknown to the officer serving [fol. 65] the writ, and no personal service has been made on him or his agent appointed under Section five, or if the service of a writ is defective or insufficient by reason of a mistake of the plaintiff or officer as to where or with whom the summons or copy ought to have been left, the Court, upon suggestion thereof by the plaintiff, shall order the action to be continued until notice of the action is given in such manner as it may order. If the property of an absent defendant has been attached and the residence of such defendant is known to the plaintiff and no legal service can be made upon him within the commonwealth, except by publication, the Court may order personal service to be made on him in such manner as it may order. If the property of an absent defendant has been attached and the residence of such defendant is known to the plaintiff and no legal service can be made upon him within the commonwealth, except by publication, the Court may order personal service to be made on him in such manner as it may direct and, upon proof that service has been so made, such defendant shall be held to answer to the action. If the defendant does not appear, the Court may order the action continued and further notice given to him in such manner as it may direct.

Sec. 8. If, after such notice, the defendant does not appear within twenty-one (21) days, after the day specified therefor, a default shall be entered and judgment rendered against him as provided in Section one.

Sec. 9. If judgment in a personal action is rendered under the preceding section upon the default of a defendant who is absent from the commonwealth or whose residence is unknown, the plaintiff shall not take out execution thereon within one year thereafter, unless he files with the Clerk of the Court a bond payable to the defendant with one or more sureties, approved by the Clerk or, upon appeal from his decision as to the sufficiency of the

sureties, by a justice of the Court rendering the judg-
[fol. 66] ment, in a sum equal to double the amount recovered, conditioned to repay the amount so recovered if the judgment is reversed, or so much of the amount as shall be recovered upon a review brought by the original defendant within one year after the original judgment.

Sec. 10. If an attachment has been made upon a writ returnable to a district Court and the defendant is absent from the commonwealth, so that no service can be made on him and he has no agent or attorney residing in the commonwealth, the Court may order the action to be continued until notice thereof is given to the defendant in such manner as it may direct. If, upon proof that such notice has been given, the defendant fails to appear on the return day of such notice, judgment may be entered for the plaintiff. Thereupon execution may issue for the plaintiff, upon his giving bond to the defendant, with sufficient surety in double the sum for which execution is to be issued, conditioned to repay the amount recovered if, within one year from the judgment, proceedings are begun upon which it is reversed.

Rothschild v. Knight, 176 Mass., 48.

[fol. 67] EXHIBIT "E"

Issue I

Provisions of Pennsylvania Laws Submitted

Sec. 1 P. L., 1097 of the Pennsylvania Act of June 21, 1911:

"A writ of foreign attachment in the form aforesaid, may be issued against the real or personal estate of: (a) any person not residing in this Commonwealth, and not being within the county in which such writ shall issue at the time of the issuing thereof, or (b) of any corporation incorporated under the laws of any other State or Nation, in all actions ex contractu, and in actions ex delicto for a tort committed within this Commonwealth."

Sec. 48 of the Pennsylvania Foreign Attachment Statute Act of June 13, 1836, P. L., 681 (2 Purd. (13th Ed.), 1718—Pa. S. 1920, Sec. 11016):

"In the case of personal property, the attachment shall be executed as follows, to wit:

"The officer to whom such writ shall be directed, shall go to the person in whose hands or possession the defendant's goods or effects are supposed to be, and then and there declare, in the presence of one or more credible persons of the neighborhood, that he attaches the said goods or effects."

Section 50 (2 Purd. (13th Ed.), 1719—Pa. St., 1920, Sec. 11019) of the same Act:

"The goods and effects of the defendant in the attachment, in the hands of the garnishee, shall, after such [fol. 68] service, be bound by such writ, and be in the officers' power, and is susceptible of seizure or manual occupation, the officer shall proceed to secure the same, to answer and abide the judgment of the Court in that case, unless the person having the possession thereof, will give security therefor."

See Wiener v. American Insurance Company, 224 Pa., 292. The Pennsylvania Supreme Court said (p. 294):

"By the act of June 13, 1836, the goods and effects of a defendant in a foreign attachment in the hands of the garnishee shall, after service of the writ, be bound by it and be in the officer's power, and, if susceptible of seizure or manual occupation, the officer shall proceed to secure the same to answer and abide the judgment of the Court in the case. If tangible goods are not in the possession of the garnishee within the jurisdiction of the Court out of which the writ of attachment issued, they cannot be touched by the writ and are, therefore, not bound by it. An intangible thing—a debt due from the garnishee to the defendant—cannot be actually seized anywhere, but, being an effect of the defendant in the hands of his creditor, is bound by the attachment from the time it is served."

And (on p. 295) said:

"The rule that to give a Court jurisdiction in foreign attachment the res must be within the territorial jurisdiction of the Court, applies only to tangible assets, capable of actual seizure, and does not apply to choses in action. Jurisdiction to fasten choses in action by garnishee process depends upon the ability to serve that process upon the debtor of the absent defendant within the jurisdiction of the Court."

[fol. 69] And (on p. 296) the Court quoted with approval from the decision of the United States Supreme Court in Harris v. Balk, 198 U. S., 215, as follows:

"If there be a law of the State providing for the attachment of the debt, then if the garnishee be found in that State, and process be personally served upon him therein, we think the Court thereby acquires jurisdiction over him, and can garnish the debt due from him to the debtor of the plaintiff and condemn it, provided the garnishee could himself be sued by his creditor in that State. We do not see how the question of jurisdiction vel non can properly be made to depend upon the so-called original situs of the debt, or upon the character of the stay of the garnishee, whether temporary or permanent, in the state where the attachment is issued. Power over the person of the garnishee confers jurisdiction on the Courts of the state where the writ issues."

Section 1 of the Act of May 10, 1889, P. L., 183 (2 Purd. (13th Ed.), 1721, Pa. St., 1920, Sec. 11029) provides:

"It shall be lawful for the plaintiff, at and after the third term of the Court after the execution of the writ to take judgment against the defendant for default of appearance unless the attachment before that time be dissolved: Provided, that the said plaintiff, fifteen days prior to the entry of said judgment, shall have filed his declaration."

Such judgment against the defendant for default of appearance is in rem, only,: Smith v. Eyre, 149 Pa., 272; 273. After judgment against defendant, a writ of scire facias may be issued against the garnishee under Section 54 of

[fol. 70] the Act of 1836 (2 Purd. (13 Ed.), 1722, Pa. St., 1920, Sec. 11032):

"After judgment against the defendant in manner aforesaid, the plaintiff may have a writ of scire facias against the garnishee, commanding him to appear before the said Court at the next term, and show cause, if any he have, why the plaintiff should not have execution of the said judgment, of the estate and effects of the said defendant, attached as aforesaid, in his hands or possession."

[fol. 71] EXHIBIT "F"

Secretary of State, Charles U. Becker, Jefferson City, Mo.

August 11, 1925

Mr. A. B. Schaffner,
South LaSalle Street, Chicago, Illinois.

DEAR SIR:

Re: Brooklyn Cooperage Co.

In reply to your letter of August 10th, beg to advise you that I am hereby confirming our telegram of today in re the above entitled company as follows:

"Brooklyn Cooperage Co. a New York corporation is licensed to do business in Missouri."

Yours very truly, Charles U. Becker, Secretary of State.

[fol. 72) EXHIBIT "G"

ISSUE I

Extracts from Missouri Statutes

Missouri Revised Statutes 1919

Civil Procedure Art. 1—Attachment in Court of Record.

Section 1725

In any Court having competent jurisdiction the plaintiff in any Civil action may have an attachment against the

property of the defendant or that of any one or more of several defendants, in any one or more of the following cases:

1. Where defendant is not a resident of the State.

2. Where defendant is a corporation whose chief office or place of business is out of this State.

3. Where defendant conceals himself so that ordinary process of law cannot be served upon him.

4. Where the defendant has also concealed or absented himself from his usual place of business in this State so that ordinary process of law cannot be served upon him.

5. Where the defendant is about to remove his property or effects out of the State with intent to defraud, hinder or delay his creditors.

6. Where defendant is about to remove out of this State with intent to change his domicile.

7. Where the defendant has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors.

8. Where the defendant has fraudulently concealed removed or disposed of his property or effects, so as to hinder or delay his creditors.

[fol. 73] 9. Where the defendant is about fraudulently to convey or assign his property and effects so as to hinder or delay his creditors.

10. Where the defendant is about fraudulently to conceal, remove or dispose of his property or effects so as to hinder or delay his creditors.

11. Where the cause of action occurred out of this State and the defendant has absconded, or secretly removed his property or effects in this State.

12. Where the damages for which the action is brought are for injuries arising from the commission of some felony or misdemeanor or for seduction of any female.

13. Where the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon the delivery.

14. Where the debt sued for was fraudulently contracted on the part of the debtor. (R. S. 1909 and 2294.)

"Attachment cannot issue against the foreign corporation on a demand not due.

Kincan & Shand, 36 Mo., 379."

Section 1726

An attachment may issue on a demand not yet due in any of the cases mentioned in the preceding section except the first, second, third and fourth, but no judgment shall be rendered against the defendant until the maturity of the demand. (R. S., 1909 and 2295.)

Section 1846

All persons shall be subject to garnishment on attachment or execution who are named as garnishees in the writ, or have in their possession goods, money or effects of the defendant not actually seized by the officer and all debtors of the defendant and such others as the plaintiff or his at- [fol. 74] torney shall direct to be summoned as garnishees. (R. S., 1909 and 2417.)

"The indebtedness must be absolutely due as a money demand to be subject to garnishee. Neil v. Tyler, 43 Mo., 581. Wheless v. Gurbey to 140 A., 572; 120 S. W., 708."

A debt not due may be garnisheed. Humphery v. Milling Co., 98 Mo., 542; 15 S. W., 140.

[fol. 75] EXHIBIT "H"

Issue I

Letter from Secretary of State of Arkansas

State of Arkansas, Department of State, Little Rock

August 12th, 1925.

Mr. Arthur B. Schaffner, 127 La Salle Street, Chicago, Ill.

DEAR SIR: I am just in receipt of your letter of the 10th, in regard to the Brooklyn Cooperage Company, a corporation organized under the laws of New York State.

I have examined the records of corporations and find that this company was issued a certificate of authority to do business in Arkansas, but from the list certified to this office by the Franchise Tax Division of the Railroad Commission, it is shown that the above named company has not paid the annual franchise tax for this year.

Hoping this is the information you desire, I am,

Yours very truly, Jim B. Higgins, Secretary of State.

[fol. 76] EXHIBIT "I"

Issue I

Digest of Statutes of Arkansas

Crawford & Moses, 1921, Printed by Authority of the Assembly

Sec. 494. On Contracts.—The plaintiff in a civil action may, at or after the commencement thereof have an attachment against the property of the defendant (a) in the cases and upon the grounds hereinafter stated as a security for the satisfaction of such judgment as may be recovered, (b) First in an action for the recovery of money (c) where the action is against:

1. A defendant or several defendants who, or some one of whom is a foreign corporation or nonresident of the State; (d) or,

2. Who has been absent therefrom four months; or,

3. Has departed from the State with intent to defraud his creditors; or,

4. Has left the county of his residence to avoid service of a summons; or,

5. So conceals himself that a summons cannot be served upon him; or,

6. Is about to remove or has removed his property, or a material part thereof, out of the State, not leaving enough therein to said defendants creditors; (e) or,

7. Has sold, conveyed or otherwise disposed of his property, or suffered or permitted it to be sold with fraudulent intent to cheat, hinder or delay his creditors; (f) or,

[fol. 77] 8. Is about to sell, convey or otherwise dispose of his property with such intent. But an attachment shall not be granted on the ground that the defendant or defendants or any of them, is a foreign corporation or nonresident of the State for any claim other than a debt or demand arising upon contract.

9. The cause of attachment mentioned in the preceding subdivisions against one or more defendants to a civil action shall not authorize an attachment against any of the defendants who are not embraced in any of said subdivisions, but the estate or interest of such defendants only as are embraced therein shall be subject of attachment (h) Second: In an action to recover possession of personal property where it has been ordered to be delivered to the plaintiff, and where the property or part thereof has been disposed of, concealed or removed so that the order for its delivery cannot be executed by the officer." Civil Code, 8216. (This section has reference only to debts on demands due. Lemaz v. Williams, 32 Ark., 172.)

Sec. 503. Garnishments sued out when.—Whenever, in a civil action, the plaintiff shall have reason to believe that any person is indebted to the defendant, or has in his hands or possession goods and chattels, money, credits and effects belonging to such defendant, the plaintiff may sue out a writ of garnishment, setting forth his cause of action against the defendant and commanding the officer charged with the execution thereof to summon the person named as garnishee to appear at the return day of the summons in the action, if the writ shall have been issued at the commencement thereof; and if not so issued on such day as the Court shall designate, to answer what goods, chattels, moneys, credits and effects he may have in his possession belonging [fol. 78] to such defendant; and by all such actions where the plaintiff shall have obtained judgment he may sue out a writ of garnishment setting forth such judgment, and shall proceed in the manner herein directed for the enforcement and collection thereof.

Civil Code, Sec. 224, as amended 1871.

(It is only in suits by attachment that this section authorized the issuance of a writ of garnishment before judgment against defendant.)

Leengardt v. Dertz, 30 and 224.
Littlejohn v. Lewis, 32 and 423.

504. The plaintiffs in all cases of garnishment may also have an attachment against the property of a garnishee, who is made a defendant thereto, by stating in his affidavit some one or more grounds of attachment mentioned in the chapter and the amount which the garnishee is indebted to the principal debtor and executing bond to said garnishee.

Civil Code No. 224, as amended 1871.

[fol. 79] EXHIBIT "J"

Issue I

Excerpt from Inheritance Tax Law of Illinois and Decision Construing Same

I. Inheritance Tax or Duty, Property Interest Subject, Rate Schedule

§ 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal, or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted in the following cases.

1. When the transfer is by will or by the intestate laws of this State, from any person dying, seized or possessed of the property while a resident of the State.

2. When the transfer is by will or intestate laws of property wthin the State, and the decendent was a nonresident of the State at the time of his death.

3. When the transfer is of property made by a resident, or by a nonresident when such nonresident's property is within this State, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoy-

ment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or income therefrom by any such transfer, whether made before or after the passage of this Act.

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the pas- [fol. 80] sage of this Act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this Act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this Act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

5. Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositors in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this Act in the same manner as though the whole property to which such transfer relates was owned by said parties as tenants in common and had been bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, lineal ancester of decedent, husband, wife, child, brother

or sister, wife or widow of the son or the husband of the daughter, or any child or children legally adopted, or to [fol. 81] any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent: Provided, however, such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: And, provided, also, that one of the parents of such person so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such decedent born in lawful wedlock. In every such case the rate of tax shall be:

Two per cent on any amount up to and including the sum of fifty thousand dollars in excess of the exemption:

Four per cent on the next one hundred thousand dollars or any part thereof:

Six per cent on the next one hundred thousand dollars or any part thereof:

Ten per cent on the next two hundred and fifty thousand dollars or any part thereof:

Fourteen per cent on the amount representing the balance of each individual transfer, provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to a father, mother, lineal ancestor of decedent, husband, wife, child, wife or widow of the son or the husband of the daughter, or any child or children legally adopted or to any person to whom the deceased or not less than ten years prior to death, stood in the acknowledged relation of a parent as above provided, or to any lineal descendent of such decendent born in lawful wedlock, which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes and the taxes to be levied in such cases only upon the excess of twenty thousand dollars received by each person. And, provided, further, that any gift, legacy, inheritance, transfer, appointment or interest passing to a brother or sister, which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or taxes and the tax is to [fol. 82] be levied in such cases only upon the excess of ten thousand dollars received by each person.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendent of such uncle, aunt, niece or nephew, the rate of tax shall be:

Six per cent on any amount upto and including the sum of twenty thousand dollars, in excess of the exemption:

Eight per cent on the next fifty thousand dollars or any part thereof:

Twelve per cent on the next one hundred thousand dollars or any part thereof:

Sixteen per cent on the amount representing the balance of each individual transfer: Provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to an uncle, aunt, niece, nephew or any lieal descendant of such uncle, aunt, niece, nephew which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such case only upon the excess of five hundred dollars received by such uncle, aunt, niece, nephew or any lineal descendant of such uncle, aunt, niece, or nephew.

In all other cases the rate of tax shall be as follows:

Ten per cent on any amount up to and including the sum of twenty thousand dollars in excess of the exemption:

Twelve per cent on the next thirty thousand dollars or any part thereof:

Sixteen per cent on the next fifty thousand dollars or any part thereof:

Twenty per cent on the next fifty thousand dollars or any part thereof:

Twenty-four per cent on the next one hundred thousand dollars or any part thereo:

Thirty per cent on the amount representing the balance of each individual transfer: Provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to [fol. 83] such persons which may be valued at a less sum than one hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only

upon the excess of one hundred dollars received by each person.

The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinabove prescribed.

Approved, June 27, 1921.

(The Executors offered in evidence as construing said Section a decision of the Supreme Court of Illinois, to wit: Peoples v. Union Trust Company, 255 Ill., 168.)

28. Exemptions

§ 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

[fol. 84] EXHIBIT "K"

Issue I

STATE OF ILLINOIS,
County of Cook, ss:

Affidavit

George Engelking, being duly sworn, says that he is one of the executors of the last Will and Testament of Francis Beidler, Deceased; that among the assets of said Estate is a claim against the Santee River Cypress Lumber Company, for $556,864.62, for advances made by said Francis Beidler in his lifetime to the said company, and for $64,672.00 for dividends declared by said company on

stock owned by said Francis Beidler, and remaining unpaid at the time of his death, said two items aggregating the sum of $621,536.62; and

That said indebtedness aggregating said last mentioned sum has been inventoried among the assets of the Estate of said Francis Beidler and is included in the computation of the value of this Estate made by the Attorney General of the State of Illinois, for the purpose of fixing the inheritance tax due from said Estate to the State of Illinois, and in due course of administration said executors will be compelled by the law of Illinois, to pay said inheritance tax upon said Estate including therein as a part thereof the said indebtedness of $621,536.62 due said Estate from said Santee River Cypress Lumber Company.

George Engelking.

Subscribed and sworn to before me this 18th day of September, A. D. 1925. Albert G. Duncan, Notary Public.

[fol. 85] EXHIBIT "L"

Issue I

Application by American Sugar Refining Company to New York Stock Exchange for Listing Bonds

American Sugar Refining Company (A Holding and Operating Company Incorporated under the Laws of New Jersey)

Fifteen-year Six per cent Gold Coupon Bonds, Due January 1, 1937

New York, December 6, 1923.

Committee on Stock List, New York Stock Exchange:

Referring to its previous application, No. A-3588, dated January 7, 1909, The American Sugar Refining Company, hereinafter sometimes referred to as the Company, hereby makes application to have listed on the New York Stock

Exchange $30,000,000 (total authorized issue) of its Fifteen-Year Six Per Cent Gold Bonds, due January 1, 1937, included in Numbers M-1 to M-30,000 for $1,000 each, Numbers D-1 to D-4,000 for $500 each, which are issued and outstanding in the hands of the public.

Authority for Issue

The bonds for which application is made are issued under a Trust Agreement made January 2, 1922, by the Company with The Chase National Bank of the City of New York as Trustee. Said Trust Agreement and said bonds were authorized by resolutions of the Board of Directors of the Company adopted at a meeting held at the office of [fol. 86] the Company, 117 Wall Street, New York, on December 14, 1921, and the action of the Directors was ratified and approved by the stockholders at the annual meeting of the Company held at Jersey City, New Jersey, on March 8, 1922.

Description

The bonds are dated January 2, 1922, and will mature January 1st, 1937, and bear interest at the rate of 6% per annum, payable semi-annually on the first days of January and July.

Both principal and interest are payable at the head office of The National City Bank of New York in the Borough of Manhattan, City and State of New York, in gold coin of the United States of America, of or equal to the standard of weight and fineness in effect on January 1, 1922, without deduction for any taxes, assessments or impositions which the Company or the said Bank may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law, except inheritance taxes, State income taxes and so much of any Federal income taxes in respect to income derived from such interest as shall be in excess of two per cent thereof.

In the said Trust Agreement, the Company has covenanted that it will reimburse to the respective owners of the bonds the amount of any lawful tax thereon paid by them to the Commonwealth of Pennsylvania, not exceeding four mills on each dollar of the principal thereof, but

only upon receipt by the Company of the certificate of such payment provided for in the said Trust Agreement, within two months after the payment of the said tax.

The permanent engraved bonds are in coupon form only in denominations of $1,000 and $500, and are registerable as to principal at the principal office of The Chase National Bank of the City of New York, Trustee, in the Borough of Manhattan, City of New York.

[fol. 87] Redemption

At the option of the Company, the outstanding bonds of this issue may be redeemed as a whole or in lots of not less than $1,000,000 aggregate principal amount, on any semi-annual interest date prior to maturity, upon at least thirty days' prior published notice in two daily newspapers published in the Borough of Manhattan, County and State of New York, at 105 per cent of the principal amount thereof, if redeemed on or before January 1, 1927; at 104½ per cent, if redeemed after January 1, 1927, and on or before January 1, 1928; at 104 per cent if redeemed after January 1, 1928, and on or before January 1, 1929; at 103½ per cent if redeemed after January 1, 1929, and on or before January 1, 1930; at 103 per cent if redeemed after January 1, 1930, and on or before January 1, 1931; and at 102½ per cent if redeemed thereafter, all as provided in the said Trust Agreement. The bonds may likewise be redeemed by the application of the proceeds of any sale of fixed assets, or out of any insurance moneys, in the manner provided in the said Trust Agreement. Upon redemption they shall be cancelled and permanently retired.

Default

If default be made by the Company in payment of principal of any of the bonds or interest for thirty days, or in any of the covenants or agreements contained in Sections 12, 13, 14, 16, 17, 19, 20 or 21 of the said Trust Agreement, or any default or violation in the performance or observance of any other covenant, condition or agreement on the part of the Company, and such default or violation shall have continued unremedied for a period of sixty days after written notice thereof shall have been given to the Company by the Trustee as provided in Section 27 (d) of the

said Trust Agreement, or if the Company shall be adjudicated a bankrupt or by order of a Court of competent [fol. 88] jurisdiction a receiver shall be appointed and such order shall have been continued in effect for a period of sixty days, or the Company shall file a voluntary petition in bankruptcy or shall make an assignment for the benefit of creditors or shall fail to meet its obligations as they mature in the usual course of business, or shall otherwise confess its insolvency as provided in Section 27 (e) of said Trust Agreement; then, in each and every such case (except default in the payment of principal on the date of maturity specified in the bonds), the Trustee, by written notice to the Company, may, and upon the written request of the holders of twenty-five per cent in aggregate principal amount of the bonds then outstanding, shall declare the principal of all the bonds then outstanding to be due and payable immediately; and, upon such declaration, the same shall become immediately due and payable, anything in the said Agreement or in the bonds contained to the contrary notwithstanding; provided, that if, at any time, either before or after the principal of the bonds shall have become so due and payable, pursuant to declaration by the Trustee, all arrears of interest upon all the bonds, with interest on overdue instalments of interest at the rate of six per cent per annum, together with the reasonable charges and expenses of the Trustee, its agents attorneys and counsel, shall have been paid by the Company, and any and every other default by reason of which the principal of the bonds may or might have been declared due hereunder (regardless of any period of time during which such default shall have continued) shall have been remedied and made good, then, in each such case, the holders of a majority in aggregate principal amount of the bonds then outstanding, by written notice to the Company and to the Trustee, may waive all defaults so remedied and made good and their consequences and rescind any such declaration; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

[fol. 89] Covenants

The Company covenants, among other things, as follows: So long as any of the bonds remain outstanding and unpaid,

the Company will not execute any mortgage upon, or make any pledge of, any of its fixed assets, (as defined in said Trust Agreement), nor will it suffer or permit any constituent Company (as defined in said Trust Agreement), to execute any mortgage upon, or make any pledge of, any of the fixed assets of such constituent Company, without (in either case) expressly providing as part of the terms thereof, that all the bonds issued under the said Agreement and then outstanding shall be secured equally and ratably with any other indebtedness secured by such mortgage or pledge; provided, that nothing herein contained shall apply to any purchase money mortgage which may be executed by the Company or by a constituent Company to secure not exceding seventy-five per cent. of the purchase price of any property hereafter acquired.

So long as any of the bonds remain outstanding and unpaid, the Company will not sell or otherwise dispose of any part of its fixed assets, except for a fair and adequate consideration, and, in case of any such sale or disposition, the Company will retain the proceeds thereof in its business of refining, merchandising and dealing in sugar and sugar products, and will not distribute any part thereof by way of either a dividend or a distribution of capital or profits; provided that, at the option of the Company, any part of such proceeds may be paid over to the Trustee, to be applied by it to the redemption of bonds issued hereunder, it the manner provided in Article Third of the said Trust Agreement.

So long as any of the bonds remain outstanding and unpaid, the Company will not consolidate with any corporation other than a constituent company, nor permit itself to be merged into any other corporation (whether or not such [fol. 90] corporation shall be a constituent company), unless, prior thereto, it shall have secured all the bonds issued under the said Trust Agreement, then outstanding, by a closed First Mortgage upon and pledge of all its fixed assets and other properties.

So long as any of the bonds remain outstanding and unpaid, the Company, for the purpose of declaring or paying dividends on its Capital Stock, will not increase its surplus existing as of January 1, 1922, by reappraising or revaluing any part of its assets existing on that date.

So long as any of the bonds remain outstanding and unpaid, the Company will not purchase, redeem or retire any of its Capital Stock, Preferred or Common; provided, that the Company may acquire its stock to such extent (if any) as may be required for the purpose of rendering effective any plan or arrangement (whether now existing or hereafter made) between the Company and its employees, whereby the latter shall or may become entitled to purchase shares in the Company.

So long as any of the bonds remain outstanding and unpaid, the Company will not suffer or permit any corporation in which the Company may now or hereafter own or control, directly or indirectly, a controlling interest to execute any mortgage upon, or make any pledge of, any of the fixed assets of such corporation which shall have been acquired by it from the Company subsequently to January 1, 1922.

Purpose of Issue

The Company issued the bonds for the purpose of paying current bank indebtedness.

History of the Company

The Company was incorporated under the laws of the State of New Jersey on January 10, 1891, for a period of fifty years and acquired the properties and business of the [fol. 91] Sugar Refiners Company, the latter having been formed in 1887.

The Capital Stock authorized and outstanding is $90,000,000 divided into 450,000 shares Common Stock of $100 par value and 450,000 shares 7%, Cumulative Preferred Stock of $100 par value. Both classes are fully paid and non-assessable. The Preferred Stock is preferred as to dividends and both classes of stock have equal voting powers. No personal liability is attached to ownership. Both classes of stock are listed on the New York and Boston Stock Exchanges.

The following is the production of refined sugar of the Company for the years 1918 to 1923 inclusive:

1918	2,440,422,340 lbs.
1919	3,035,378,257 lbs.
1920	1,876,676,523 lbs.

1921	1,818,864,724 lbs.
1922	3,058,221,228 lbs.
1923	2,400,000,000 lbs. (estimated)

Description of Property

The Company owns in fee modern and well equipped sugar refineries located at Brooklyn, Boston, Philadelphia, New Orleans, Jersey City and Baltimore. These refineries have an aggregate melting capacity in excess of 16,000,000 pounds of raw sugar per day and are fully equipped with facilities for the manufacture and delivery of package as well as bulk sugars. Each of the refineries has adequate waterfront, docking and railroad facilities for the prompt and efficient discharge of raw sugars and the transportation of the refined products.

In detail the Company owns in fee the following sugar refineries, all of which are equipped with modern machinery and appliances: Jersey City, New Jersey—Refinery at Washington and Essex Streets, Jersey City, New Jersey, comprising about eight acres of city land with deep water frontage on the Morris Canal Basin and railroad facilities. [fol. 92] Boston, Massachusetts—Refinery in Granite Street, South Boston, Massachusetts, comprising about four city blocks, with 1,000 feet water front, dock and railroad facilities.

Louisiana—Refinery at Chalmette, near New Orleans, Louisiana, comprising about 30 acres of land; 1,400 feet of water front, with dock facilities and railroad accommodations. This plant, which commenced its operation in May, 1909, has a refining capacity of over 3,000,000 pounds daily. It is equipped with the latest labor-saving machinery.

Brooklyn, New York—Refinery in Kent Avenue, extending to East River; comprising five city blocks and four piers, with dock and wharfage facilities along the river; also part of two blocks on the opposite side of Kent Avenue.

Philadelphia, Pennsylvania—Refinery at foot of Reed Street, comprising about 12 acres of land with railroad connections, extensive wharfage facilities and three docks. Also pier and dock at South Front Street.

Baltimore, Maryland—Refinery at Key Highway East began operations in April, 1922. Plant site comprises 20 acres with 1,300 feet of waterfront.

Land holdings—Company's timber supply consists of 40,103 acres of land owned in fee and the timber rights on 12,500 acres additional in the Adirondacks, 1,870 acres owned in fee and timber rights on 76,978 acres in South Carolina, 26,000 acres owned in fee in Louisiana and 150,000 acres owned in fee in Missouri and Arkansas—a total of 225,148 acres owned in fee, and 95,978 acres timber rights on which there are 1,127,325,355 feet of hardwood timber and 90,600 cord or wood pulp timber. The lands in Missouri and Arkansas are being gradually reclaimed for agricultural purposes. The Company has in operation a plan of reforestation of cut-over lands. Timber properties are owned either by the Great Western Land Company, the entire Capital Stock of which except directors' qualifying shares) is owned by the Brooklyn Cooperage Company, or [fol. 93] by the Brooklyn Cooperage Company direct. The entire Capital Stock of the Brooklyn Cooperage Company is itself owned by The American Sugar Refining Company. These lands are served by 113½ miles of railroad. Other properties of the Brooklyn Cooperage Company include factories in Boston, New York, Philadelphia, Georgetown (S. C.), Red Cross (La.), Chalmette and Baltimore.

Through ownership of the entire $15,000,000 Capital Stock of the Central Cunagua, a Cuban corporation, the Company controls about 300,000 acres of Cuban sugar lands located in the Camaguey Province, together with Centrales Cunagua and Jaronu, two of the largest and most modern sugar factories on the Island, with a total capacity of 1,200,000 bags of raw sugar per annum. More than ninety miles of railroad with adequate rolling stock are operated in connection with these mills.

[fol. 94] SUBSIDIARIES OF THE AMERICAN SUGAR REFINING COMPANY

Name	Where incorporated	Date of incorporation	Duration of charter	Nature of business	Stock Authorized and issued	Owned by parent Company
American Sugar Refining Co. of New York	New York	Nov. 13, 1901	99 years	Sugar refining	$3,500,000	All
Franklin Sugar Refining Co	Pennsylvania	Feb. 12, 1890	Perpetual	Sugar refining	5,000,000	All
Spreckles Sugar Refining Co	Pennsylvania	June 9, 1890	Perpetual	Sugar refining	5,000	All
Brooklyn Cooperage Co	New York	Apr. 18, 1881	50 years	Cooperage	100,000	All
American Sugar Transit Corp	Delaware	Jan. 7, 1920	Perpetual	Transportation	7,500 shares No par value	All
Barry Coal Co	Pennsylvania	Feb. 29, 1916	Perpetual	Coal mining	$5,000	All
Great Western Land Co	Missouri	June 20, 1907	50 years	Timber	50,000	Brooklyn Cooperage Co.
Butler County R. R. Co	Missouri	Sept. 1, 1905	50 years	Transportation	200,000	Brooklyn Cooperage Co.

Antilles Molasses Company.—Incorporated July 19, 1920, Cuba; duration of charter, indefinite; nature of business, molasses. Capitalization, authorized and issued, $100,000; par value $100. All owned by The American Sugar Refining Company.

Central Cunagua.—Incorporated May 5, 1916, Cuba; duration of charter, indefinite; nature of business, raw sugar. Capitalization, authorized and issued, $7,500,000 Common $7,500,000 Preferred; par value, $100 Common, $1,000 Preferred. All owned by The American Sugar Refining Company.

Waverly Sugar Company.—Incorporated November 26, 1921, Iowa; duration of charter, 20 years; nature of business, beet sugar. Capitalization, authorized and issued, $300,000; par value $100. All owned by The American Sugar Refining Company. This company is a reorganization of the Iowa Sugar Company which went into a receiver's hands and was bought in for the purpose of protecting so far as possible the American Sugar Refining Company's loans to the Iowa Sugar Company. The company is not operating and will be sold if a buyer can be found either as a beet sugar company or as a junk proposition. The company has no debts other than incidental ones for the care of the property, local taxes, insurance and expenses of a similar nature. It is treated as an investment on the books of The American Sugar Refining Company.

Dividends

Dividends on the Preferred Stock are payable quarterly on the 2nd day of January, April, July and October. Dividends have been paid as follows: On Preferred: 7% per annum since 1891. On the Common: 1891, 8%; 1892, 9%; [fol. 96] 1893, 22%; 1894 to 1899 inclusive, 12%; 1900, 6½%; 1901 to July, 1921, 7% per annum; none since.

In addition, extra dividends of ¾% were paid quarterly from January 2nd, 1981, to October 2nd, 1920, on the Common Stock.

Employees

The average number of employees of the Company and its subsidiaries for the year 1922 was approximately 9,148.

Depreciation

The Company maintains a very liberal policy as to depreciation, as shown by the annual profit and loss statement of past years. The value of its properties is at all times fully maintained by the making of all needful and proper repairs thereto and renewals and replacements thereof.

[fol. 97] Profit and Loss Statement for Five Years—1918 to 1922

Credits:	1918	1919	1920	1021	1922
Profit from operation	$6,661,683.86	$10,283,081.92	$ 1,802,437.65	*$2,177,275.97	$10,083,832.55
Interest	687,845.00	653,441.45	313,292.49	*1,033,660.86	*381,129.90
Income from investments	5,202,693.09	4,314,095.75	4,289,185.65	4,113,856.39	1,523,007.51
Net profit from investments	35,264.90	.....	.....	.....	.....
Excess reservations in former years	.....	.....	2,417,085.56	*1,489,310.29	129,062.83
	$12,587,486.85	$15,250,619.12	$8,822,001.35	*$586,390.73	$11,354,772.99
Amount of appropriations for improvement of plants expended in new construction and offset in depreciation on plants and equipment below	.....	.....	.....	.....	.....
Amount deducted from surplus of former years	.....	.....	10,686,280.38	5,311,367.98	.....
	$12,587,486.85	$15,250,619.12	$19,508,281.73	$4,724,977.25	$11,354,772.99
Debits:					
Depreciation, renewal and replacement	$2,000,000.00	$2,000,000.00	$2,000,000.00	.....	$1,000,000.00
Sundry reserves	2,153,111.09	3,831,944.62	10,195,811.98	.....	.....
Interest on bonds	.....	.....	.....	.....	1,800,000.00
Dividends declared	7,312,469.75	7,649,969.00	7,312,469.75	$4,724,977.25	3,149,986.00
	$11,465,580.84	$13,481,913.62	$19,508,281.73	$4,724,977.25	$5,949,986.00
Amount added to surplus of former years	1,121,906.01	1,768,705.50	.....	.....	5,404,786.99
	$12,587,486.85	$15,250,619.12	$19,508,281.73	$4,724,977.25	$11,354,772.99

* Loss.

[fol. 98]

Surplus December 31, 1922

Balance, December 31, 1921		$7,154,490.05
Added to surplus, December 31, 1922, as per income and profit and loss statement		5,404,786.99
		$12,559,277.04
Deduct: Loss in 1922 on 1920 contracts		5,358,145.22
Balance, December 31, 1922		$7,201,131.82

Sundry Reserves, December 31, 1922

Balance, December 31 ,1921		$21,855,541.89
Deduct:		
Loss Iowa Sugar Company loan	$1,000,000.00	
Adjustments, accounts receivable, 1920 contracts	703,187.64	
		1,703,187.65
Balance, December 31, 1922		$20,152,354.24

[fol. 99] Condensed General Balance Sheet, December 31, 1922, of the American Sugar Refining Company and its Domestic Constituent Companies

Assets

Real estate and plants, including refineries, warehouses, cooperage, railroads, tank cars, tank steamers, coal barges, wharves, and stables, with their machinery and equipment, and timber and other lands owned in fee or through ownership of the entire Capital Stock of constituent companies, at cost less depreciation		$62,975,914.45
†Merchandise and supplies, including raw and refined sugar, syrup, molasses, material in process of manufacture, bone black, cooperage and stock and supplies on hand		15,371,932.63
Prepaid accounts, insurance and taxes		2,623,854.63
Accounts receivable, current		7,538,217.80
Accrued income, interest earned and dividends declared but not yet collected		371,366.19
Loans		19,500,989.33
Investments, general		34,040,685.46
Cash on hand, with trust companies, banks, and short-term loans		6,012,380.05
Customers' acceptances, 1920 contracts		1,585,064.69
Accounts receivable a/c claims, 1920 contracts		1,160,809.71
*Accounts receivable — undelivered 1920 contracts		7,693,494.49
		$158,874,709.43

Liabilities

Capital Stock authorized and issued:		
Preferred	$45,000,000.00	
Common	45,000,000.00	
		$90,000,000.00
Bonds—15-Year 6%, due 1937		30,000,000.00
Sundry reserves		20,152,354.24
Accounts, taxes and interest payable		6,419,937.87

Raw sugar drafts payable		4,290,000.00
Dividends declared, payable January 2nd, 1923, and former dividends unclaimed		811,285.50
Surplus:		
Balance December 31, 1921	$7,154,490.05	
Add amount transferred in 1922	5,404,786.99	
	$12,559,277.04	
Deduct loss in 1922 on 1920 contracts	5,358,145.22	
		7,201,131.82
		$158,874,709.43

*Note—At February 27, 1923, the accounts receivable, undelivered 1920 contracts, amounted to $7,242,000 and arrangements have been concluded to that date for deliveries which, when completed, will result in a further reduction of this 396 amount by $1,238,000.

†Refined sugar adjusted to market, other supplies taken at cost which as a whole is less than market.

[fol. 100] Agreements

The American Sugar Refining Company agrees with the New York Stock Exchange as follows:

Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary owned or controlled companies to dispose of an integral asset or stock interest in other companies unless for retirement or cancellation, without notice to the Stock Exchange.

To publish once in each year and to submit to the stockholders on or before the day of the annual meeting of the Company, a statement of its financial condition, a consolidated income account, covering the previous fiscal year, a consolidated balance sheet showing assets and liabilities at the end of the year or an income account and balance sheet of the parent Company and of all constituent and subsidiary companies.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

Not to make any change in authorized amounts of listed securities without thirty days' notice to the Stock Exchange in advance of the effective date of such change.

Not to make any change in listed securities, of a transfer agency or of a registrar of its stock, or of a Trustee of its bonds and other securities, without the approval of the Committee on Stock List, and not to select as Trustee an officer or director of the Company.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to [fol. 101] subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, so as to afford the holders of its securities a proper period within which to record their interests, and that all rights to subscribe or to receive allotments, and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, for any purpose.

To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

General

The Company's fiscal year ends December 31st.

The annual meeting of stockholders is held on the second Wednesday in March of each year at the office of the Com-

pany, Washington and Essex Streets, Jersey City, New Jersey.

The Board of Directors consists of twelve directors who are elected for a term of three years, four directors being elected to replace the four retiring in that year.

Directors (Terms expire 1924): Samuel MacRoberts, Albert H. Wiggin, of New York; Philip Stockton, of Boston; George H. Frazier, of Philadelphia. (Terms expire 1925) Newcomb Carlton, Fred Mason, of New York; Charles Francis Adams, of Boston; James H. Douglas, of [fol. 102] Chicago. (Terms expire 1926) Earl D. Babst, W. Edward Foster, of New York; James L. Richards, of Boston (one vacancy).

The Officers are: Earl D. Babst, President; Robert M. Parker, Vice-President; W. Edward Foster, Ralph S. Stubbs and Fred Mason, Vice-Presidents; Arthur B. Wollam, Treasurer; Edwin T. Gibson, Secretary; Henry Edgcumbe, Comptroller; Lynde Selden and David H. Gibson, Assistant Treasurer; Holbrook G. Cleaveland, Assistant Secretary.

The Agency for the payment of interest and principal is The National City Bank of New York.

The office for the registration and exchange of bonds is The Chase National Bank of the City of New York.

The American Sugar Refining Company. W. Edward Foster, Vice-President.

This Committee recommends that the above-described $30,000,000 Fifteen-Year Six per Cent. Gold Coupon Bonds, due January 1, 1937, included in Nos. M-1 to M-30,000 for $1,000 each and D-1 to D-4000 for $500 each, be admitted to the list.

Robert Gibson, Chairman.

Adopted by the Governing Committee, February 13, 1924.

E. V. D. Cox, Secretary.

[fol. 103] EXHIBIT "M"

Issue I

Extracts from "A Century of Sugar Refining"

On March 1, 1918, the President of the American Sugar Refining Co. issued a pamphlet with the foregoing title, in which he stated, among other things, as follows:

"One of the most important items in the distribution of sugar has been the cost of the barrel. The American Sugar Refining Co. and its constituent company, the Franklin Sugar Refining Co., in shipping their products to the four quarters of the globe require every year millions of barrels. This one item has necessitated the acquisition through another constituent company of standing timber on lands covering an area of 625 square miles, or more than one-half the size of Rhode Island. The estimated timber which may be cut from its holdings amounts to half a billion feet. To insure a constant source of supply on a low basis of cost, this constituent company has five large barrel factories and seven stave and heading mills, the latter with six and one-half miles of stave sheds. To bring the logs to the mills it has had to construct and operate 130 miles of railroad. Built in the first instance for this purpose some of these roads have developed into interstate commerce carriers with standard freight and passenger equipment. One road already forty-four miles long, and to which extensions are constantly being made, has become the main artery between thriving industrial centers created by it in a region formerly a swamp.

"The barrel factories have an annual output of over 7,000,000 barrels, requiring in their manufacture 80,000,000 board feet of timber which is produced in the stave [fol. 104] and heading mills of the Company. Prudence has required reforestation on a large scale, and since 1910 about one-half million of white pine and spruce trees have been planted by the Company in the open forests of the Adirondacks."

Statement to Stockholders of the American Sugar Refining Co. of Dec. 31, 1924

In a statement to the stockholders of the American Sugar Refining Co., issued as a pamphlet by the President of the Company on Dec. 31, 1924, inter alia, the following appears:

December 31, 1924.

To the Stockholders:

Supplementing the Annual Reports, it seems an appropriate time to give the stockholders a comparative statement of the financial, operating and merchandising activities of the Company for the last two consecutive ten-year periods.

Income Accounts

We set up below a contrast of the Income Accounts of the Company for each ten-year period:

Credits

	Period 1905-1914	Period 1915-1924
Operations	$50,295,445.42	$ 50,720,918.98
Interest	6,055,036.96	7,534,183.35
Investment Income	20,499,825.76	35,188,658.35
Profit from sale of Investments	4,660,317.17	11,687,529.73
Cunagua (A) Depreciation Reserve		4,029,365.83
(B) Surplus Undistributed		1,098,087.00
	$81,510,625.31	$110,258,734.24

[fol. 105]

Debits

Charges to Reserve and Surplus a/c, extraordinary losses and adjustments	24,630,553.22	22,911,757.58
Depreciation Plants and Equipment, including Cunagua	11,579,793.56	16,819,670.54

Bond Interest	.....	5,400,000.00
Dividends	62,999,455.75	55,349,773.75
	99,209,802.53	100,481,201.87
Surplus increase or decrease	$17,699,177.22 Decrease	$9,777,541.37 Increase

Comments

(A) Reserve and Surplus Accounts have increased $9,777,541.37 against a decrease of $17,699,177.22 in the previous 10-year period; (B) Total income increased about $29,000,000.00 and averaged $11,000,000.00 annually as against $8,150,000.00; (C) Each item of income shows a gain.

Domestic Balance Sheets

In the auunal report for the Stockholders Meeting, March 11, 1925, the Balance Sheet of the year may differ somewhat from the one now set up, which is before final adjustments and audit.

[fol. 106] Assets

	Dec. 31, 1924	Dec. 31, 1924
Real Estate and Plants	$48,704,895.92	$ 62,195,977.00
Merchandise and Supplies	15,203,241.30	8,777,225.33
Prepaid and Deferred	254,864.81	3,144,801.48
Accounts Receivable	4,350,167.61	4,672,527.64
Accrued Income	480,123.55	161,822.89
Loans	5,137,275.00	21,248,097.87
Investments-General	29,768,070.13	25,981,420.98
Cash	19,110,779.16	31,221,407.40
Receivables, a/c 1920	.....	5,030,260.41
	123,009,417.48	162,433,541.11

Liabilities

Accounts, Taxes, Interest Equipment, including Payable	3,894,895.45	5,422,968.96
Dividends Payable	1,594,926.00	811,521.75
Bonds due 1927		30,000,000.00
Capital Stock	90,000,000.00	90,000,000.00
Surplus and Reserves	27,009,417.48	36,199,050.40
	$123,009,417.48	$162,433,541.11

[fol. 107] STATEMENT RE EXHIBIT "N"

Issue I

This exhibit is the trust agreement between the American Sugar Refining Company and the Chase National Bank of the City of New York, as Trustee, executed on the 2nd of January, 1922. The agreement covers thirty-six printed pages, and makes full provision for the payment of $30,000,000.00 of bonds issued by the refining company, bearing date January 2, 1922, and maturing January 1st, 1937, and bearing interest at six per cent, the Bank acting as Trustee for the bond holders. This agreement does not constitute a mortgage upon the assets of the refining company, but specifically provides that as long as the bonds remain unpaid and outstanding, the refining company will not execute any mortgage, or make any pledge of any of its fixed assets, nor will it suffer any of its constituent companies to execute a mortgage or make any pledge of its fixed assets without (in either case) expressly providing as part of the terms thereof that all the bonds issued under this agreement and then outstanding shall be secured equally and ratable with any other indebtedness secured by such mortgage or pledge. The term "fixed assets" is defined as including real estate, leases, lands, buildings, machinery, plants, apparatus and equipment, wharves, docks steamships, boats, lighters, timber lands, railway, etc., including the stocks of any and all constituent companies owned or thereafter acquired by

the refining company. The Brooklyn Cooperage Company is listed as one of the four constituent companies, all of the stock of which is owned by the refining company.

[fol. 108] EXHIBIT "O"

Issue I

Affidavit of A. B. Siegel

STATE OF NEW YORK,
County of New York, ss:

Alexander B. Siegel, being duly sworn, says: I am an attorney-at-law duly authorized to practice in the Courts of the State of New York, and having an office at 25 Broad Street, Borough of Manhattan, New York City. I have been a member of the New York Bar since 1907 and have since 1908 been continuously engaged in the practice of law in the said Borough of Manhattan, City of New York.

I am informed that Santee River Cypress Lumber Company, a corporation organized under the laws of the State of South Carolina, was indebted to Francis Beidler, of Chicago, Illinois, at the time of his death on March 4, 1924, and is now indebted to George Engelking and Francis Beidler 2nd as executors of the last will and testament of said Francis Beidler, deceased, in the sum of approximately $600,000.00. I am likewise informed that in the year 1920 said Santee River Cypress Lumber Company sold certain standing timber to Brooklyn Cooperage Company, a corporation organized under the laws of the State of New York, under a contract by which Brooklyn Cooperage Company agreed to pay for said timber in quarterly installments during a period of about twenty years.

Assuming the facts to be as above stated, I am of opinion that under the laws of New York, an action may be maintained in the Courts of New York by said executors. I am likewise informed that said Brooklyn Cooperage Company is doing business in the State of New York, and has a usual place of business therein at 117 Wall Street, Borough of Manhattan, New York City.

[fol. 109] Assuming the facts to be as above stated I am of opinion that under the laws of New York an action may be maintained in the Courts of the State of New York by said executors against said Santee River Cypress Lumber Company, said action to be begun by attachment, so-called, corresponding to what is known as "garnishment" in some other states, of such amounts as are due under the aforesaid contract between said Santee River Cypress Lumber Company and said Brooklyn Cooperage Company. I am further of the opinion that said amounts as shall appear to be due to said Santee River Cypress Lumber Company from the Brooklyn Cooperate Company under the terms of said contract may be levied upon by attachment, even though the time for payment of said installments has not arrived. The subject of attachment of a chose in action is governed by Section 916 of the Civil Practice Act, which was derived without change of language from Section 648 of the Code of Civil Procedure, which have read substantially the same since the year 1877, as follows:

"The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the state; which belongs to the defendant and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby."

That these words apply to debts actually due, but the time for the payment of which has not yet arrived, has been held in numerous cases of which there may be cited as a [fol. 109½] leading case the following: Edison Electric Company v. Guastavino, No. I, 16 App. Div., 350, by Ingraham, J., at page 354:

"By the express provision of Section 648, before cited, a levy of an attachment thereupon (viz., upon service of notice) is deemed a levy upon, and a seizure and attachment of, the debt represented thereby. It is the debt that exists at the time of the service of the notice that is seized and

levied upon. The fact the debt is not payable at the time of the levy would not interfere with its being seized and levied upon by the Sheriff upon the service of the warrant of attachment."

The doctrine of this case, and particularly the words which I have quoted from, were expressly reaffirmed in the very recent case of Clements v. Doblin, 209 App. Div., 208, decided on May 2, 1924.

(Signed) Alexander B. Siegel.

Sworn to before me this 20th day of August, 1925. (Signed) Arline F. Whitfield, Notary Public. Commission expires March 30, 1926. Notary seal attached.

[fol. 110] EXHIBIT "P"

Issue I

Affidavit of Erastus H. Hewitt

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Erastus H. Hewitt, being duly sworn, says:

I am an attorney at law, duly authorized to practice in the Courts of the Commonwealth of Massachusetts, and having an office at 910 Harristers Hall, Boston, Massachusetts. I have been a member of the Massachusetts bar since 1915 and have since then been continuously engaged in the practice of law in said Boston.

I am informed that Santee River Cypress Lumber Company, a corporation organized under the laws of the State of South Carolina, was indebted to Francis Beidler of Chicago, Illinois, at the time of his death on March 4, 1924, and is now indebted to George Engelking and Francis Beidler 2d as executors of the last will and testament of said Francis Beidler, deceased, in the sum of approximately $600,000.00. I am likewise informed that in the year 1920 said Santee River Cypress Lumber Company sold certain standing timber to Brooklyn Cooperage Company, a corpo-

ration organized under the laws of the State of New York, under a contract by which Brookland Cooperate Company agreed to pay for said timber in quarterly instalments during a period of about twenty years. I am likewise informed that said Brooklyn Cooperage Company is doing business in the Commonwealth of Massachusetts and has a usual place of business therein at 352 C Street, South Boston.

Assuming the facts to be as above stated, I am of opinion that under the laws of Massachusetts an action may be [fol. 111] maintained in the Courts of Massachusetts by said executors against said Santee River Cypress Lumber Company, said action to be begun by attachment under trustee process, so-called, corresponding to what is known as "garnishment" in some other states, of such amounts as are under the aforesaid contract between said Santee River Cypress Lumber Company and said Brooklyn Cooperage Company. I am further of the opinion that such amounts as shall appear to be due to said Santee River Cypress Lumber Company from the Brooklyn Cooperage Company under the terms of said contract are attachable by trustee process even though the time for payment of said instalments has not arrived, under and according to the provisions of Chapter 246, General Laws of Massachusetts, Section 24, which said section is as follows:

"Section 24. Money or any other thing due to the defendant absolutely and without any contingency may be so attached before it has become payable, but the trustee shall not be compelled to pay or deliver it before the time appointed by the contract."

Erastus H. Hewitt.

Boston, Mass., August 19, 1925.

Then personally appeared Erastus H. Hewitt, personally known to me, and made oath that the foregoing statement by him subscribed is true to the best of his knowledge, information and belief.

Before me,

Nathan Efron, Notary Public. My commission expires Aug. 10, 1928.

[fol. 112] EXHIBIT "Q"

Issue I

Affidavit of Alfred S. Well

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Alfred S. Weill, being duly sworn, says:

I am an attorney at law, duly admitted to practice in the Courts of Pennsylvania, and have an office at 1240 Land Title Building, Philadelphia, Pennsylvania. I was admitted to practice in Pennsylvania in 1902 and have, since then, been continuously engaged in the practice of law at Philadelphia.

I am informed that Santee River Cypress Lumber Company, a corporation organized under the laws of the State of South Carolina, was indebted to Francis Beidler of Chicago, Illinois, at the time of his death on March 4, 1924, and is now indebted to George Engelking and Francis Beidler 2d as executors of the last will and testament of said Francis Beidler, deceased, in the sum of approximately $600,000. I am likewise informed that in the year 1920 said Santee River Cypress Lumber Company sold certain standing timber to Brooklyn Cooperage Company, a corporation organized under the laws of the State of New York, under a contract by which Brooklyn Cooperage Company agreed to pay for said timber in quartely instalments during a period of about twenty years. I am likewise informed that said Brooklyn Cooperage Company is doing business in the Commonwealth of Pennsylvania and has a place of business therein at the corner of Reed and Swanson Streets, Philadelphia.

Assuming the facts to be as stated, I am of opinion that, under the laws of Pennsylvania, said executors, upon tak-
[fol. 113] ing out ancillary Letters of Administration in Pennsylvania, or the holder of valid title to the debt by assignment from the said executors, may issue a foreign attachment in the Courts of Pennsylvania against the Santee River Cypress Lumber Company, as defendant, summoning the Brooklyn Cooperage Company, as garnishee, and thus attach all amounts owing under said contract by the

latter company to the former company, even though not presently payable. Sec. 1, P. L. 1097 of the Pennsylvania Act of June 21, 1911, a copy whereof follows, expressly authorizes foreign attachment to be issued against foreign corporations.

"A writ of foreign attachment, in the form aforesaid, may be issued against the real or personal estate of: (a) any person not residing in this Commonwealth, and not being within the county in which such writ shall issue at the time of the issuing thereof, or (b) of any corporation incorporated under the laws of any other State or Nation, in all actions ex contractu, and in actions ex delicto for a tort committed within this Commonwealth."

It is settled by the decisions that a debt is attachable although not presently payable; see, Day v. Zimmerman, 66 Pa. 72 (1871), in which case the Supreme Court held, per Williams J., that a promissory note "though not due, * * * is a debt within the meaning of the Attachment Laws," and was "liable to be attached before maturity in the hands of the maker at the suit of a creditor of the payee."

Alfred S. Weill.

Subscribed and sworn to before me this 10th day of September, 1925. Anna C. Bardon, Notary Public. Commission expires March 2, 1929.

[fol. 114] NOTICE OF APPEAL

Within the time allowed by law, the Executors gave, in writing to the South Carolina Tax Commission, a sufficient written Notice of Appeal.

EXCEPTIONS

Within due time, the appellants served upon the respondent the following exceptions:

The appellants appeal to the Supreme Court of South Carolina from the assessment by the South Carolina Tax

Commission of an Inheritance Tax against the estate of Francis Beidler, and from the rulings of the commission in connection therewith upon the following grounds of exceptions, to wit:

1. It is submitted that the South Carolina Tax Commission erred in assessing an inheritance tax upon the items of Five Hundred Fifty-six Thousand, Eight Hundred Sixty-four and 22/100 ($556,864.22) Dollars and of Sixty-four Thousand, Six Hundred Seventy-two ($64,672.00) Dollars due by the Santee River Cypress Lumber Company to Francis Beidler at the date of his death, for the reasons that the amendment to the Inheritance Tax Law of South Carolina passed in 1924 was not of force at the date of the death of Francis Beidler, and is not retroactive; and that under the facts and law submitted to the Tax Commission it appears that said debts are not property within the State of South Carolina, it being a fact that said debts were owned by the decedent at the place of his legal residence in Illinois, and it further being a fact that it is not essential for the collection of said debts to have ancillary letters of administration taken out in the State of South Carolina or to resort to the Courts and laws of this State for said purpose at all, or certainly not in any manner except under the full faith and credit clause of the Federal Constitution.

[fol. 115] 2. It is submitted that the South Carolina Tax Commission erred in assessing an Inheritance Tax upon the items of Five Hundred Fifty-six Thousand, Eight Hundred Sixty-four and 22/100 ($556,864.22) Dollars and of Sixty-four Thousand, Six Hundred Seventy-two ($64,672.00) Dollars due by the Santee River Cypress Lumber Company to Francis Beidler at the date of his death, for the reasons that the amendment to the Inheritance Tax Law of South Carolina passed in 1924, was not of force at the date of the death of Francis Beidler and is not retroactive and that under the facts and law submitted to the Tax Commission it appears that said debts are not property within the State of South Carolina, it being a fact that said debts were owned by the decedent at the place of his legal residence in Illinois, and it further being a fact that it is not essential for the collection of said debts to have ancillary letters of administration taken out

in the State of South Carolina or to resort to the Courts and laws of this State for said purpose at all, or, certainly not, in any manner except under the full faith and credit clause of the Federal Constitution. It, therefore, being a fact that said debts are not property within the State of South Carolina, but are property within another State, it is submitted that the assessment of an Inheritance Tax theer-upon in South Carolina is in contravention of the 14th Amendment of the Constitution of the United States in that so to do is to deprive appellants of property without due process of law and to deny them the equal protection of law.

[fol. 116] 8. Although it is stipulated that no exception is necessary to raise said question the appellants, as a precautionary measure submit that the South Carolina Tax Commission erred in refusing to consider (and objecting to the same being printed in the record hereof) Exhibits L, M & N, it being submitted that said Exhibits and the evidence contained therein are clearly admissible and pertinent to the issue herein, the same being in effect the testimony of th American Sugar Refining Company as to its financial condition.

9. Although it is stipulated that no exception is necessary to raise said question, the appellants as a precautionary measure submit that the State Tax Commission erred in not considering and in objecting to the printing in the case herein of Exhibits O, P and Q herein, it being submitted that the testimony of the lawyers of the States in question contained in said Exhibits is admissible and pertinent to the issue, it being proper to prove by the testimony of persons learned in the law of said States what the law of said States is upon such matters as is covered by said Exhibits.

[fols. 117 & 117½] AGREEMENT RE CASE ON APPEAL

It is agreed between the appellants, Francis Beidler, II, and George Engelking, Executors, by Hendersons & Salley, their Attorneys, and the respondent, South Carolina Tax Commission, by J. Fraser Lyon, its Attorney, that the foregoing shall constitute the Case on Appeal, that when

the same is printed the requisite number of copies shall be filed with the Clerk of the Supreme Court, three copies filed with the Tax Commission; and that the printed case when so filed shall constitute the return.

Hendersons & Salley, Appellants' Attorneys. J. Fraser Lyon, Respondent's Attorney.

[fol. 118] IN SUPREME COURT OF SOUTH CAROLINA

Case No. 186

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of Francis Beidler, Appellants,

v.

SOUTH CAROLINA TAX COMMISSION, Respondent

In the Original Jurisdiction

Opinion No. 12212—Filed May 27, 1927

Modified

Arthur B. Schaffner, of Chicago, and Hendersons and Salley, of Aiken, for appellants.

John M. Daniel, Attorney General, J. Fraser Lyon and N. A. Turner, of Columbia, for respondent.

OPINION

RAMAGE, A. J.:

This is an appeal from the decision of South Carolina Tax Commission imposing an inheritance tax on certain assets of the estate of Francis Beidler, deceased.

On March 4, 1924, Francis Beidler, a resident of Chicago, in the State of Illinois, died in said State, leaving of force his last will and testament, which was duly probated in the Probate Court of Cook County, Illinois, and Francis Beidler, II, and George Engelking thereafter duly qualified and are now acting as executors of said estate. At the time of his death, the said decedent owned among other per-

sonal property the following, as to which an inheritance tax has been assessed by the South Carolina Tax Commission, to wit: 8,000 shares of the capital stock of Santee River Cypress Lumber Company, a South Carolina Corporation, which by agreement reached between the Tax Commission and the attorneys for the executors, has been valued for the purpose of the assessment of the South Carolina Inheritance Tax, at $204.00 per share, or $1,632,000.00. The balance of the stock in said Lumber Company is owned by the widow and children of the decedent, Mrs. Elizabeth Beidler, owning 2,000 shares, Francis Beidler II, 2,500 shares and Elizabeth Beidler, Jr., 2,500 shares.

In addition thereto, said Santee River Cypress Lumber Company, was indebted to the decedent at the time of his death, in the sum of $556,864.22, for advances theretofore made by him to said Company, and in the sum of $64,672.00 for dividends previously declared by the said Company on the shares of stock above described. Said indebtedness was an open, unsecured book account, which was entered upon the books of the Santee River Cypress Lumber Company, kept at Eutawville, S. C. Mr. Beidler also kept a complete set of personal books in Chicago, upon which appear entries of said amounts being due him by Santee River Cypress Lumber Company, except the item of $64,672.00 dividends.

The executors of the said estate filed with the South Carolina Tax Commission as required by the Inheritance Tax Law of the State of South Carolina, an affidavit, setting out in said affidavit all of the above assets, but specifically claiming and submitting that the two items of $556,864.22 and $64,672.00 above referred to, were not on March 4, 1924, taxable under the laws of South Carolina then existing.

[fol. 119] On July 25th, 1925, the South Carolina Tax Commission levied an inheritance tax upon all of the above assets amounting to a tax of $144,106.10 (The Reporter will set out all of page 3 except the first two lines at the top of the page and page 4 of the Case and Exceptions).

The executors filed with the Tax Commission, Cahill's Revised Statutes of the State of Illinois, Sec. 10, 11, 12, 13 of Chapter 41, showing the right of a widow to renounce a will of a husband in the State of Illinois, and her right

after so renouncing, to take absolutely one-third of all the personalty of his estate; the executors also filed a certified copy of Mrs. Francis Beidler's renunciation of the will of her husband, and her election to take her legal share under the Statute. In accordance therewith, the South Carolina Tax Commission have in distributing the estate in South Carolina, for the purpose of the assessment of the South Carolina Inheritance Tax, assigned one-third of the estate in South Carolina to Mrs. Beidler; from which no appeal is taken.

The value of the estate outside of South Carolina, has not been ascertained by the South Carolina Tax Commission, but for the purpose of this appeal, it is agreed that it was large and valuable, probably approximating one million dollars.

The following are the issues:

1. Are the items above referred to, of $556,864.22 and $64,672.00 taxable herein?

2. Is the Federal Estate Tax allowable as a deduction herein?

3. Are the executors entitled to an exemption in favor of the Francis Beidler Charitable Trust Fund, of $6,000.00 or only $200?

4. Does 10% interest on the South Carolina Inheritance Tax start to run on July 31, 1925 or on January 28, 1926?

We shall now consider the first question as to the tax on the debt and on the dividends. First as to the debt: "Upon the other hand, it is very generally held in this Country, unless the terms of the Statute forbid, that a succession tax or inheritance tax is payable in respect of the personal property belonging to the estate of a non-resident decedent, where such property or the evidence thereof, is physically present in the taxing State; at least if not there for a mere temporary presence." Note to 46 L. R. A. (N. S.) at page 1168, citing Blackstone v. Miller, 188 U. S. 189, and Callup's Appeal, 76 Conn. 617, and other cases.

"Bonds of a foreign Corporation, as well as bonds and certificates of stock of domestic corporations, when deposited in a safe deposit vault within the State, although owned by a non-resident, are 'property within the State',

within the meaning of the transfer Act of 1892." Re Estate of Whiting, 34 L. R. A. 232.

"Money of a non-resident deposited by him in a bank within the State, although mingled with trust funds to an account opened by him as trustee, constitute 'property within the State', within the meaning of the New York transfer tax Act of 1892, which includes property of a non-resident decedent if within the State." Re Estate of Houdayer, Deed. 34 L. R. A. 235.

The Court goes on to say: "What was the real thing—the essence of the transaction that gives rise to this controversy. The decedent brought his money into this State, deposited it in a bank here, and left it there until it should suit his convenience to come back and get it. * * * It was an investment in this State, subject to attachment by [fol. 120] creditors. If not voluntarily repaid, he could compel payment through the courts of this State. The depository was a resident corporation, and the receiving and retaining of the money were corporate acts in this State. Its repayment would be a corporate act in this State. Every right springing from the deposit was created by the laws of this State. Every act out of which those rights arose, was done in this State. In order to enforce those rights, it was necessary for him to come into this State. Conceding that the deposit was a debt, conceding that it was intangible, still it was property in this State for all practical purposes, and in every reasonable sense within the meaning of the transfer tax act. Re Romaine's Estate, 127 N. Y. 80, 89, 12 L. R. A. 401."

"Thus the legislature intended to repeal the maxim mobila personam sequuntur, so far as it was an obstacle * * *"

"And so words 'being in this State' in the statute imposing a collateral inheritance tax upon 'all assets * * * of every kind, passing from any person, who may die seised and *and* possessed thereof, being in this State', refer to the property and not to the person; and property actually within the State, although for other purposes it may be treated as constructively elsewhere, because of the owner's non-residence, is subject to the Tax." State v. Dalrymple, 70 Md. 294, 3 L. R. A. 372.

We herewith submit some quotations from the case that really determines this appeal, Blackstone v. Miller, 188 U. S. 189 (123 Sup. Court Rep. 277):

"A State may tax the transfer, under the will of a non-resident, of debts due the decedent by its citizens. The imposition of a tax, under the New York Inheritance Tax Law, on the transfer, under the will of a non-resident, of debts due the decedent, by residents of that State, does not violate the 14th Amendment to the Federal Constitution."

"The property consists of a Debt of $10,692.24 due to the deceased by a firm, and of the net sum of $4,843,456.72, held on a deposit account by the United States Trust Company of New York, * * * In view of the State decisions, it must be assumed that the New York Statutes is intended to meet the transfer of this property, if it can be reached * * * The domicile, naturally, must control a succession of that kind, Universal succession is the artificial continuance of the person of the deceased by an executor, heir or the like, so far as succession to rights and obligations is concerned. It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying mobilia sequuntur personam. But being a fiction, it is not allowed to obscure the facts, when the facts become important. * * * If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this Court with regard to garnishment of a domestic debtor of an absent defendant. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So, again, what enables any other than the very

creditor in proper person to collect the debts? The law of the same place. To test it, suppose that New York should turn back the current of legislation, and extend to debts the rule still applied to slander, that actio personalis moritur cum persona, * * * Power over the person of the debtor confers jurisdiction, we repeat. And this being so, [fol. 121] we preceive no better reason for denying the right of New York to impose a succession tax on debts owned by its citizens, than upon tangible chattels found within the State at the time of the death. The maxim mobilia sequuntur personam, has no more truth in the one case than in the other. When logic and the policy of a State conflict with the fiction due to historical tradition, the fiction must give way."

The following quotations are from L. R. A. (N. S.) 1916 A, Page 895, et seq.:

"The State Court (Re Blackstone 1902, 69 App. Div. 127 74 N. Y. Supp. 508, affirmed without opinion in 171 N. Y. 682, 64 N. E. 1118), in holding that the deposits represented 'property within the State' within the New York Statute then in force. * * *"

"That the New York cases cited in the note in 46 L. R. A. (N. S.) 1168, et seq., holding that debts due to estate of non-resident were subject to a succession tax, did not turn upon the residence of the debtor, but rather upon the physical presence, within the State of the evidence of the property, is apparent from the discussion in those cases. The point is clearly illustrated in re Tiffany (1911) 143 App. Dic. 327, 128 N. S. N. Y. Supp. 106, affirmed in 202 N. Y. 550, which is affirmed in 233 U. S. 434, 58 L. Ed. 1030, holding that notes belnoging to a non-resident testator, some made by non-residents of New York and others by residents of New York, were subject to the payment of the tax, because of the time of the owner's death and for some time prior thereto, they were kept in a safe deposit box in New York, the Court observing at the close of the opinion, that it is possible that the two classes should be treated differently, but that it did not seem that the residence of the debtor changed the character of the property, or determined whether it is liable to inheritance tax. * * * The case

of Re Adams (1915) Iowa L. R. A. 1915 C., 95, holding that notes secured by mortgages upon real estate in Iowa were subject to the Iowa collateral inheritance tax upon the ground that they had a "business situs" in the State by reason of their use in the business of loaning and reloaning money, and that such situs was not destroyed by their removal by the local agent two days before the death of the owner in order to defeat the tax. * * * Debts due a non-resident's estate from residents of Minnesota, including those evidenced by promissory notes, were held in State Ex. Rel Graff v. Probate Court (Minn.) L. R. A. N. S. 1916 C. p. 901, to be subject to a succession tax under the Minnesota Statute providing for the imposition of a tax, when a transfer is by will or intestate law, of property 'within the State' or within its jurisdiction," and the decedent is a non-resident of the State at the time of his death. The Court declares generally that 'where the Courts of the debtor's domicile have jurisdiction of the debt for purposes of probate administration, it goes without saying that they have jurisdiction for the purposes of enforcing a succession' * * * So in State ex rel. Knox County v. Bunce (1915), 187 Mo. App. 607, 173 S. W. 101, it was held that an indebtedness due on a note from a resident, was within the Missouri statute declaring that all property 'within the State' belonging to the estate of a non-resident shall be subject to the tax."

Dodge County v. Burns, 35 L. R. A. (N. S.) 877 (Neb.) seems to hold that simple debts were different from an indebtedness represented by a paper writing held in another State, on the ground that simple debts would support an administration of the estate of the non-resident.

"Personal property of a non-resident invested or habitually kept within the State, is subject to the collateral inheritance tax imposed by Laws, 1887, chap. 713, sec. 1, on property of a resident which passes by will or by the intestate Laws of the State, or if the decendent was a non-resident, on property within the State." Re Romaine, [fol. 122] 12 L. R. A. 401 (N. Y.)

The Court says in discussing the case: "It was held otherwise by the Court of Appeals of Maryland in State

v. Dalrymple, 70 Md. 294, 3 L. R. A. 392, where the words 'being in the State' were declared to refer to the actual and not to the constructive situation of the property. In Alvany v. Powell (N. C.) 2 Jones Eq. 51, it was declared "that property whether real or personal, situate in the State of North Carolina, but belonging to one domiciled and dying intestate in Canada, was subject to the succession tax imposed by a statute of that State. * * * Where, however, the money of a non-resident is invested in this State, as it was by Mr. Romaine in the bond and mortgage in question, and in the deposits made by him in the Savings Banks, or where the property of a non-resident is habitually kept even for safety, in this State, we think that the Statute applies both to the letter and spirit. Such property is within this State in every reasonable sense, receives the protection of its laws, and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident. We think that a fair construction of the Act permits no distinction as to such property based simply upon the residence of the owner."

In Wheeler v. Sohmer, 233 U. S. 434, it was held that the State of New York could by proper law to that effect, tax the transfer of notes in a safe deposit box in New York, though the notes were made either by a resident of Chicago, secured by mortgages of Chicago lands to trustees in Illinois, or by a Virginia Corporation.

We find the following in a case note to 4 L. R. A. (N. S.) pages 954 and 955: "In New York and some other States, the tax is laid according to the principles both of domicile and of actual situs. It is apparent that, under such a statute, the tax is payable, not only in respect to debts due from residents to non-residents, if the conditions essential to give them local 'business situs' exists. * * * It may be remarked in this connection, however, that it is competent for a State to assign a local situs, for the purpose of property taxation, even to credits belonging to a non-resident which have been reduced to a concrete form and the evidences of which are held within the State, in the hands of an agent for the purpose of collection or renewal with a view to new loans and the carrying on of such trans-

actions as a permanent business'' New Orleans v. Stempel, 175 U. S. 309.

Bristol v. Washington County, 177 U. S. 133.
State Assessors v. Comptoir Not' D' Escompte, 191 U. S. 388.
Parmlee's Wharton Conflict of Laws, p. 175, sec. 80 c.

We refer to the entire note found in 4 L. R. A. (N. S.) found on pages 953, 954, 5, as bearing on the question of the location of funds in a State as a business situs and which are under the jurisdiction of the State for the purposes of taxation, though the owner lives in another State.

The case of Chicago, R. I. and P. v. Sturm, 174 U. S. 710, 19 Supreme Court Reporter, 797, holds: ''A debt may be attached at the domicile of the debtor, though the creditor's domicile is in another State.''

We think it may be safely said that this is the general law.

The Beidler Estate depends upon the laws of South Carolina and our Court to protect this debt. The tax commission found this debt here, and there is no legal or proper showing made that the debt has ever been anywhere else; the Tax Commission was well within the law in holding this debt liable for the inheritance succession tax.

[fol. 123] In addition to the debt's having an actual situs in South Carolina, the debt and dividend in question also had what is termed a ''business situs'' in this State. Both the debt and dividend were involved in the assets of Santee River Cypress Lumber Company; they were a part of its working capital and were no doubt left with the debtor Company (in which Mr. Beidler was vitally interested and which he and his family owned in toto), to help and assist it along in its business. He was tremendously interested in the affairs of the large and extensive corporation, and was no doubt cheerfully willing to leave these two large amounts invested here to help make dividends for the Company. But whatever his motive, the two amounts in question were here, and that is the end of the matter so far as we are concerned. It was being used by the Company and was invested by it and was a part of it and allowed to remain so by Beidler himself who fixed its status. The

Court cannot shut its eyes to the plain facts of this case, and their evident relations, so far as the real parties at interest are concerned: All of the debt was involved and the property invested in South Carolina.

To use the language of the Blackstone case: "The State has power over the person of the debtor" and "power over the person of the debtor confers jurisdiction."

The main question in this appeal is whether the Beidler estate is liable to the State, for an inheritance tax upon a debt of $556,864.22, which the Santee River Cypress Lumber Company, a South Carolina corporation doing business near Eutawville, S. C., owed to Francis Beidler, a citizen of Chicago, at the time of his death, March 4, 1924. The debt was for advances in cash made by Beidler to the corporation, in which he and his family owned the entire capital stock. A similar question has arisen with reference to a claim of $64,672.00, the amount of dividends which had been declared upon Beidler's stock but which had not been paid.

As we understand the case of Fuller v. Tax Commission, 128 S. C. 14, read in connection with the case of Blackstone v. Miller 188 U. S. 189, the test of the question whether a debt, represented by an open account, due by a resident of South Carolina to the estate of a decedent being administered in another State, is "property within the State," is thus expressed in the very lucid opinion of Mr. Justice Marion in the Fuller case:

"May ancillary administration be compelled in the latter State, (that is the domicile of the debtor), *or may resort in some form to the laws of the latter State be necessary to secured recognition and confirmation of the title transferred by the intestate or succession* laws of the State of the domicile, in order to complete the transfer in fact, and make effectual the disposition of the property authorized by the law of the domicile? If so, we think there is such a transfer of a non-resident decedent's 'property within the State' seeking to impose the tax, as may properly be taxed, consistently with the theory of inheritance taxation." (Italics added.)

We do not see how there can be but one result from the application of this test. The debt was due by a South Carolina corporation doing business in this State; it was

an asset of the decedent's estate at the domicile of the debtor, the South Carolina corporation; the title to the claim did not vest in the representatives of the decedent's estate until ancillary administration had been taken out in this State; recourse to the Courts and laws of South Carolina was therefore indispensable "to make effectual the disposition of the property authorized by the law of the domicile."

We do not think that there can be any doubt as to the proposition that the voluntary payment of the debt by the South Carolina corporation to the Beidler executors in Chicago, would have been in order, without the appointment of an ancillary administrator in South Carolina; that their [fol. 124] acquittance would have been a complete protection to the South Carolina debtor; Wilkins v. Ellett, 108 U. S. 256 and authorities cited in the dissenting opinion of Mr. Justice Cothran in Wolfe v. Bank, 123 S. C. 208; but that is not the question; it is whether ancillary administration may be compelled in this State, or resort in some form to the laws of this State be necessary to secure recognition and confirmation of the title transferred by the intestate or succession laws of the State of Illinois. If the debtor declined to pay the debt, it is clear that ancillary administration in this State and a resort to its laws would be inevitable.

"The general rule of law is well settled, that for the purpose of founding administration, all simple contract debts are assets at the domicile of the debtor; and that the locality of such a debt for this purpose is not affected by a bill of exchange or promissory note having been given for it, because the bill or note does not alter the nature of the debts, but is merely evidence of it, and, therefore, the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable."

Wyman v. Halstead, 109 U. S. 654.

See also to the same effect—Dial v. Gary, 14 S. C. 573.

If then this be true, where is the title to the local assets? In Stoddard v. Aiken, 57 SC 134, the plaintiffs had qualified as executors of the will of a Georgia citizen, in Georgia; they brought suit in Barnwell County, this State, upon a note given by Aiken, a resident of Barnwell County, to their testator. The Court held that as the executors rested their title to the note, and their right to maintain the action upon

the appointment as executors by the Court of Georgia, which had no effect in this State, their complain should be dismissed.

In Heyward v. Williams, 57 S. C. 235, the action was by the plaintiff as assignee of a note and mortgage upon land in Beaufort County, executed by the defendant Williams to one Baldwin, a citizen of New York, whose executors, qualified there, had assigned the note and mortgage to the plaintiff Heyward. Upon demurrer to the complaint, the Court held that the title of the executors to the personal property of the testator was limited to the State line, saying:

"It is true that they could cause probate to be made of their testator's will in this State, but until that was done, they could not intermeddle with the testator's property in this State. If they desired to recover upon any choses of action of their testator against parties residing in this State, they would be ogliged to be clothed with the rights of executors under our State laws. * * * But it is also now the settled law of this State, that an assignment of a chose in action, by an executor clothed with his office by the will, and the probate thereof in the Surrogate Court of New York, will not carry title to such chose in action, to an assignee, so that the assignee in his own right, may by his action in our Courts, recover from a defendant who resides in this State, (South Carolina), what is due on the chose in action, without the executors, who so assign and transfer to the plaintiff, the chose in action owned by their testator, while his domicile was in the State of New York, shall first make probate of the testator's will in our Courts."

In Dial v. Gary 14 S. C. 571, the action was by the plaintiff, as assignee of a note and mortgage upon land in Richland County, executed by the defendant Gary to one Burke, a citizen of Massachusetts, whose administrator, qualified there, had assigned the note and mortgage to the plaintiff Dial. Upon demurrer to the complaint, the Court held [fol. 125] that the assignment was invalid for want of title to the note and mortgage in the administrator saying:

"Now if the administrator of Asa Burke, appointed in Massachusetts, his domicile, had brought these actions,

can there be a doubt that a demurrer would have been fatal? Or if the property in question was movable, tangible property, such as horses, cattle, wares and merchandise, located in this State at the time of the death of Burke in Massachusetts, could his administrator, appointed there, institute suit for the recovery of such property? The right to sue for the recovery of property springs from title. Without title, no right of action can exist under the authorities referred to above, (Carmichael v. Ray 1 Rich 116, Tilman v. Waldrop 7 SC 60, Richardson v. Gowan 10 Rich 109). No title to such property could vest in a foreign administrator. Neither would a foreign administrator have the power to sell or transfer such property, and for the same reason—the want of title."

The Court cites with evident approval the case of Stevens v. Gaylord 11 Mass 267, in which the Court held:

"If a foreigner or a citizen of any other of the United States dies, leaving debts and effects in this State, these can never be collected by an administrator appointed in the place of the domicile." In that case the debtor had come into the State of the decedent's domicile and was personally served. The Court held that that did not affect the principle announced; and our Court commenting:

"This must have been upon the ground that the administration in Massachusetts does not give title, even in that State, to notes and other choses in action of deceased parties dying there, on persons in other States." There the bond and mortgage were physically in possession of the administrator in Massachusetts.

See also:

Patterson v. Pegues, 18 S. C. 584.
Cochran v. Fellahs, 20 S. C. 237.
Gravely v. Gravely, 25 S. C. 1.
Stevenson v. Dunlap, 33 S. C. 350.
Jones v. Jones, 39 S. C. 247.
Pollock v. Association, 48 S. C. 65.
Ayres v. Desportes, 56 S. C. 544.
In re Est. Mayo, 60 S. C. 402.
Bank v. Tax Com., 133 S. C. 406.

So it appears manifest that the debts in question are assets of the decedent's estate to be assembled and dis-

tributed by the Courts and laws of South Carolina, the domicile of the debtor, and that even the title can only be established in the personal representative, by ancillary administration in the Courts and under the laws of this State; and as said by the New York Court of Appeals in the case of In re Houdayer 34 L. R. A. 235:

"Where the right, whatever it may be, has a money value and can be owned and transferred, but cannot be enforced or converted into money against the will of the person owing the right without coming into this State, it is property within this State for the purpose of a succession tax. Thus the right in question is property, because it is capable of being owned and transferred. It is within this State, because the owner must come here to get it. It is subject to taxation, because it is under the control of our laws."

[fol. 126] In Liverpool v. Orleans Assessors 221 U. S. 346, there was involved the power of a State to tax premiums of insurance due by the residents to a non-resident insurance company, not evidenced by a written instrument. The Company contended that a tax upon incorporeal things, such as abstract credits, not in concrete form and without tangible shape, violated the 14th Amendment. The Court said:

"The asserted distinction cannot be maintained. When it is said that intangible property, such as credits on open account, have their situs at the creditor's domicile, the metaphor does not aid. Being incorporeal, they can have no actual situs. But they constitute property; as such they must be regarded as taxable, and the question is one of jurisdiction. The legal fiction, expressed in the maxim mobilia sequuntur personam, yields to the fact of actual control elsewhere. And in the case of credits, though intangible, arising as did those in the present instance, the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile. The debt, of course, is not property in the hands of the debtor; but it is an obligation of the debtor as is of value to the creditor because he may be compelled to pay; and power over the debtor at his domicile is control of the ordinary means of enforcement. Blackstone v. Miller, 188 U. S. 205, 206. Tested by the criteria afforded by the authorities we have cited, Louisiana must be deemed to have had jurisdiction to impose the tax.

The credits would have had no existence save for the permission of Louisiana; they issued from the business transacted under her sanction within her borders; the sums were payable by persons domiciled within the State, and there the rights of the creditor were to be enforced. If locality, in the sense of subjection to sovereign power, could be attributed to these credits, they could be localized there. If, as property, they could be deemed to be taxable at all, they could be taxed there."

The Court further stated:

"Equally, then, had the State the power to tax the premium accounts here involved. They were not withdrawn from its constitutional authority, either by reason of the fact that they were payable in consideration of insurance, instead of loans or goods sold, or by the circumstance that the credits were not evidenced by written instruments. They were none the less enforceable credits arising in the local business."

It appears to us that the case of Blackstone v. Miller, 188 U. S. 189, is conclusive of the question. In that case Blackstone, the testator, died domiciled in Illinois. Under a statutory provision practically identical with our's, the State of New York levied a succession tax on a debt due the deceased by a New York firm and on a sum of money held on a deposit account to the credit of the deceased by a New York Trust Company. The debt was some $10,000; the deposit over $4,000,000. The Court in its decision appears to have lost sight of the insignificant (?) debt compared with the deposit, and directed its attention principally to the latter. As both were involved and the tax sustained as to both, the observation in reference to the deposit may be considered applicable as well to the debt. The reasoning upon which the conclusion sustaining the tax was based, is precisely in line with the test above quoted from the Fuller case.

In this discussion we have not considered the amendment of 1925 to the Act of 1922, specifically providing, for the tax to be laid upon debts due by residents of this State to non-residents, as that amendment was passed after the death of Beidler. The appellants argue from the fact of amendment, that the General Assembly has admitted that

the Act of 1922 did not cover debts. This appears argumentatively plausible but not conclusive. It is often expedient [fol. 127] to apparently concede an objection, in order to avoid the question in the future, without actually conceding the validity of the objection, and this is the position which we think that the Legislature adopted. In our opinion, and we have so considered it, the amendment was not essential.

But it is insisted by the appellants, that the question is concluded by the decision in the Fuller case, which holds that where it appears that ancillary administration, or a resort in other form to the laws of this State to compel recognition of the transferees (executors) title, cannot be compelled in order to accomplish in fact the transfer authorized by the law of the testator's domicile, the debts cannot be considered as "property within the State", subject to the inheritance tax; and that it appearing that the executors may proceed by attachment in another State, to collect the debts due by the domestic corporation to them, from a non-resident debtor of the domestic corporation, they come within the rule announced in the Fuller case.

It appears that under a contract between the Santee Company and the Brooklyn Cooperage Company, guaranteed by the American Sugar Refining Company, the Brooklyn Company was indebted to the Santee Company, at the time of the death of Beidler, in the sum of over $4,000,000. The appellants' contention is that as they have the right to proceed by attachment, in the State of New York, against the Brooklyn Company, as a debtor of the Santee Company, they may pass around the Courts and laws of South Carolina, without the necessity of procuring ancillary administration in South Carolina, or of resorting in any way to the laws of South Carolina, to establish their right of succession to these debts or of collecting them.

If the case falls within the rule announced in the Fuller case, there can be no doubt of the correctness of the appellants' contention; but we do not think that it does. In the Fuller case the immunity was sustained upon the ground that the bond-holders who held bonds executed and payable in New York and physically in possession of the executors in that jurisdiction, could acquire jurisdiction of the person

of the mortgagor by foreclosing the mortgage in North Carolina, where a part of the railroad was located; and that for that reason resort to the Courts or to the laws of South Carolina, was entirely unnecessary. The Court said:

"The securities not being physically present in this State, no ancillary administration could be compelled for the purpose of reducing them to possession. The bonds and certificates were payable in New York, and the resident debtor could not require ancillary administration in this State as a condition of payment. In the contingency that it should be necessary for the trustee to foreclose the mortgage for the benefit of the bondholders, since the line of railway mortgaged lies in two States, resort could be had to the Courts of North Carolina to foreclose the mortgage and sell the line of railway as a whole."

The situation in the case at bar is quite different. The claims in question, the debts due by the Santee Company to Beidler's estate, are not bonds or other securities having possibly a local situs at the domicile of the creditor, but are assets of the decedent's estate, with an established local situs at the domicile of the debtor, subject to ancillary administration there; and as the authorities from this State, hereinbefore referred to, conclusively demonstrate, the title to them is in abeyance until an ancillary administrator should be appointed by the Courts of this State to receive it and perfect the succession. It seems clear therefore that if the domiciliary administrator or executor in Chicago, never had possession of or title to the choses in action involved, and could not have maintained an action upon them, either in South Carolina or elsewhere, an ancillary administrator appointed in New York, for the purpose of attach-
[fol. 128] ment, could acquire no higher right. The executors of Beidler had no power therefore, either directly or through an ancillary administrator appointed in New York, to attach the debt in New York which the Brooklyn Company owed to the Santee Company.

As is said in the Blackstone case:

"Power over the person of the debtor confers jurisdiction." The most that the executors could possibly have had, was the power over certain property of the debtor, a pro-

ceeding in rem, which could not confer jurisdiction of the person.

This is illustrated in the case of Bliss v. Bliss (Mass.) L. R. A. 1916 A 889. There a partnership having places of business in New York and in Massachusetts with property in each State, gave a note to one of the partners who resided in New York and kept the note there. After the death of the payer of the note, the Boston Office issued a check in payment of the note and transmitted it to New York. The tax authorities in Massachusetts sought to impose an inheritance tax upon the transfer of the note. The Court held that it could not be done for the reason that the holder of the note could acquire jurisdiction of the person of the makers in New York and realize his judgment out of property there without having to resort to the Courts or laws of Massachusetts.

So also by the case of State v. Chadwick (Minn.) L. R. A. 1916 3 1288. There bonds of a railroad company, incorporated under the laws of Minnesota, but being subject to the jurisdiction of other States through which its lines ran, which were owed by a resident of Illinois, were held not subject to an inheritance tax in Minnesota, for the reason, as in the Fuller case, that jurisdiction of the person of the debtor could be secured in a State other than Minnesota and that accordingly there was no necessity for resorting to the Courts or laws of Minnesota. The Court said:

"What we have said is in view of the facts before us showing personal jurisdiction of the corporate debtor in other States in which it is authorized to do business."

To the same effect is Re Gordon (N. Y.) 10 L. R. A. (N. S.) 1089.

It seems clear therefore that as the executors of Beidler could not have acquired title to the debts without taking out ancillary administration in this State, and could not have acquired jurisdiction of the person of the domestic corporation by attachment outside of the State, resort to the Courts and laws of South Carolina was inevitable. These considerations, by the test declared in the Fuller case, conclude the question of the State's right to impose the inheritance tax.

In this connection we desire to call attention to the case of Baker v. Doe, 88 S. C. 69, which, in our opinion, contains a manifest misapprehension of the law upon the subject of foreign attachments. In that case it is declared:

"Another reason why there was error in refusing to vacate the warrant of attachment, is that the debt was not attached at the domicile of the debtor." This is clearly not the law as is demonstrated by the case from the Supreme Court of the United States which is cited and quoted from to sustain the proposition.

Appellant's attorneys in their lucid and able argument, produced many authorities showing that the Courts of several other States could attach debts owing to Santee River Cypress Lumber Company; then it may be asked, if [fol. 129] such be the case why could not the Tax Commission of South Carolina assume jurisdiction of the debt itself, which is located in this State? What the Courts of the other States could do indirectly, why could not the Tax Commission do directly? We, therefore, affirm the South Carolina Tax Commission as to the first issue on the $556,864.22 and $64,672.00 items for the reasons given above.

As to the second issue: We think that this matter is settled by the able opinion of Judge Cothran, Associate Justice of this Court, in the case of Simmons v. Tax Commission, 134 S. C. 261. It seems that the precise point raised by this exception was before the Court in that case and we are bound by it. That case clearly holds that under the Inheritance Law we are now considering, the Federal Estate Tax is allowable as a deduction herein. The exceptions raising this question are sustained, except that in making the calculation, the South Carolina Tax Commission must make the adjustment of the Federal Tax that must be credited here in South Carolina, upon the basis of what the Federal Government actually charged and collected; and not necessarily upon the Two Hundred and four dollar valuation as contended for by the appellants. As the Federal tax must come off, it is just and fair that the basis should be what was paid and not upon any other basis. In making the settlement therefore if it appears as stated by appellants "The Federal Government collected the estate Tax upon a lesser valuation," then in making the settlement, the lesser valu-

ation must be used; as the actual amount the Federal Government received is the test and not figured at so mucy per stock value on the basis of the Tax Commission's figures. The reason is this: The entire amount that the Tax Commission figured, even on the $204.00 basis under the law can be collected; then that fixes the amount. That total amount is fixed by the lawful authorities. But when it comes to making the deduction of the Federal Taxes, then what was actually paid must be the measure of the credit and deduction.

For the reasons so well stated by Respondent in its Points and Authorities, concerning the third question the Action of the Tax Commission is hereby affirmed.

As to the fourth issue, we think that the contention of the appellants should be sustained. The question is whether the 10% interest provided for by the Act should begin to run from January 28, 1926, one year from the date of the qualification of the executors, or from July 31, 1925, one year from the date of qualification of one Frank Stevenson as an ad interim administrator of the Beidler estate.

It appears that Beidler died on March 4, 1924; that the will was not probated in Chicago until January 28, 1925, at which time the executors qualified. In the meantime, pending the probate and qualifications, under an Act of Illinois, under circumstances creating a delay, as detailed in the Act, Stevenson was appointed administrator of the estate for the purpose of making an inventory, safely keeping the assets, collections, preservation and administration as he might be directed by the Court, and turning the estate over to the executor or administrator when qualified. It does not appear that he did otherwise than collecting and preserving the assets, even he went so far as that; no activities on his part with reference to carrying out the provisions of the will are shown, or that he received from the Court any directions in this respect. We think that under the circumstances he was nothing more than an ad interim custodian, without other power; and that the real administration began with the probate of the will and the qualification of the executors on January 28, 1925; that they had until January 25, 1926, to pay the tax and that the 10 per cent interest, in the nature of a penalty, did not begin to run until that date.

The appeal does not question the right of the Commission to impose a tax upon the stock owned by Beidler at the time of his death in Chicago, and which was located there in his possession. The authorities appear to sustain the right. 26 [fol. 130] R. C. L. 216.

It is the judgment of this Court that the judgment and action of the Tax Commission as to the first and third questions be affirmed. That as to the second and fourth questions the appeal is sustained and the Tax Commission reversed and that the matter be referred back to the Tax Commission for readjustment in conformity with the judgment of this Court herein expressed.

Watts, C. J., Cothran, Blease and Stabler, J.J., concur.

[fols. 131-139] Petition for Rehearing, covering 9 pages, omitted from this print. It was denied and nothing more by order September 26, 1927.

[fols. 140 & 140½] In Supreme Court of South Carolina

Order Denying Rehearing—Sept. 26, 1927

This petition is hereby dismissed.

R. C. Watts, C. J. T. P. Cothran, A. J., Eugene S. Blease, A. J., John G. Stabler, A. J., C. J. Ramage, A. A. J.

[fol. 141] In Supreme Court of South Carolina

[Title omitted]

Petition for a Stay of Remittitur

To the Honorable the Supreme Court of South Carolina:

The undersigned Francis Beidler, II, and George Engelking, as Executors of the Estate of Francis Beidler, respectfully show to the Court:

1

That the Honorable, the Supreme Court of South Carolina, has finally acted upon the above entitled appeal, and that your petitioners are aggrieved by the decision of this Court, and that it is their desire and intention by writ of error to appeal said case to the United States Supreme Court upon the general ground that a Federal question is involved, in that the decision of the Court and the Court's holding as to the Statute Laws of the State of South Carolina as applicable to the appeal in question are repugnant to the Fourteenth amendment of the Constitution of the United States, in that said decision and the holdings of said Court and the Court's construction of the Statute Laws of the State of South Carolina and said Statutes deprive these petitioners of property without due process of law and denies them the equal protection of law, all in contravention to the Fourteenth Amendment of the Constitution of the United States.

[fol. 142] 2

That it is the bona fide intention of these petitioners within the time allowed by law, to take all the necessary steps required by law to take said cause to the Supreme Court of the United States by a writ of error, which will in due time be applied for, and by all other procedure that is required by law.

3

That in the meanwhile and until said writ of error and other necessary procedure can be perfected, for which the space of three months is allowed by law from the final action of the Supreme Court of South Carolina herein, it is necessary and proper that the remittitur herein be stayed in order to permit these petitioners to perfect their appeal and their application for a writ of error to the Supreme Court of the United States herein.

Wherefore, your petitioners pray that for the purposes above set out the remittitur herein be stayed for the space of seventy-five days from this date.

And your petitioners will ever pray.

Francis Beidler, II, George Engelking, as Executors of the Estate of Francis Beidler, by Hendersons & Salley, Attorneys.

Dates at Aiken, S. C., this — day of ——, 1927.

[fol. 143] In Supreme Court of South Carolina

Order Staying Remittitur

It appearing from the foregoing petition that it is the bona fide intention of the petitioners to take all necessary steps by writ of error and otherwise, to take the foregoing appeal for review to the United States Supreme Court, it is ordered,

That the sending down of the remittitur herein be stayed for the space of ninety days from this date, in order to allow petitioners sufficient time for the preparation of all necessary documents to that end.

Done at —— this *day of* Sept. 22nd, 1927.

R. C. Watts, Chief Justice of South Carolina.

[fol. 144] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 145] In Supreme Court of South Carolina

[Title omitted]

Assignments of Error

Now come the above-named Appellants and Plaintiffs in Error and respectfully submit that in the record proceedings, decision and final judgment of the Supreme Court of the State of South Carolina in the above-entitled suit, there is manifest error in this, to wit:

First. The Court erred in holding that the debts due from Santee River Cypress Lumber Company to Francis Beidler were property within the State of South Carolina.

Second. The Court erred in not holding that the statute of South Carolina entitled, "An Act to Raise Revenue for the Support of the State Government by Levy and Collection of a Tax on Gifts, Inheritances, Devises, Bequests and Legacies in Certain Cases, Approved February 23, 1922," if applicable to the debts due from Santee River Cypress Lumber Company to Francis Beidler, was repugnant to the Constitution of the United States and in contravention of the Fourteenth Amendment to the Constitution of the United States, in that as so applied it deprived [fol. 146] Appellants of property without due process of law.

Third. The Court erred in holding that the debt of $556,864.22 due from Santee River Cypress Lumber Company to Francis Beidler for advances theretofore made by him to it was property within the State of South Carolina.

Fourth. The Court erred in holding that the debt of $$64,672 due from Santee River Cypress Lumber Company to Francis Beidler for dividends theretofore declared and remaining unpaid was property within the State of South Carolina.

Fifth. The Court erred in not holding that the situs of said debts due from Santee River Cypress Lumber Company to Francis Beidler and the situs of each of them was in the State of Illinois and not in the State of South Carolina.

Sixth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of New York without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Seventh. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Massachusetts without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

[fol. 147] Eighth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Maryland without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Ninth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Pennsylvania without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Tenth. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Missouri without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Eleventh. The Court erred in not holding that said debts and each of them might have been collected through legal proceedings in the State of Arkansas without the appointment of an ancillary administrator in the State of South Carolina or otherwise resorting to the courts or laws of South Carolina, and that therefore the said debts were not property within the State of South Carolina.

Twelfth. The Court erred in not holding that inasmuch as the debts due from the Santee River Cypress Lumber [fol. 148] Company to Francis Beidler and each of them could have been effectually collected by legal proceedings elsewhere than in South Carolina, the same were not property within the State of South Carolina, and the imposition of an inheritance tax thereon by the State of South Carolina amounted to depriving Appellants of property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth. The Court erred in holding that the debts due from Santee River Cypress Lumber Company to Francis Beidler had a business situs in the State of South Carolina.

Francis Beidler, II, George Engelking, as Executors of the Estate of Francis Beidler, Deceased, by Hendersons & Salley, P. F. Henderson, Their Attorneys.

[fol. 149] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR WRIT OF ERROR

To the Honorable Richard C. Watts, Chief Justice of the Supreme Court of the State of South Carolina:

Now come Francis Beidler II and George Engelking, as executors of the estate of Francis Beidler, deceased, the above-named appellants, by Hendersons and Salley, their attorneys, and hereby respectfully set forth that:

1. On the twenty-second day of September, 1927, the Supreme Court of the State of South Carolina, made and entered a final order and judgment in the above-entitled suit in favor of the respondent and against your petitioners, in which final order and judgment as well as in the proceedings theretofore had in said suit, errors were committed to the prejudice of your petitioners, as will more fully appear from the assignment of errors herewith filed.

2. Said Supreme Court of the State of South Carolina is the highest court of said state in which a decision in said suit could be had and in said suit there was drawn in question the validity of a statute of the State of South Carolina, on the ground of its being repugnant, in the particulars hereinafter and in said assignment of errors noted, [fol. 150] to the Constitution of the United States, and the decision of said Supreme Court of the State of South Carolina was in favor of its validity.

3. On March 4, 1924, Francis Beidler, a resident of the City of Chicago, in the State of Illinois, and a citizen of

said State, died in said City, leaving a last will and testament which was probated and admitted to record in the Probate Court of Cook County, Illinois, on January 28, 1925, and letters testamentary then issued thereon out of said court to your petitioners as executors. Said Francis Beidler, deceased, left him surviving his widow Elizabeth L. Beidler, his son, Francis Beidler II, who is one of your petitioners, and his daughter Elizabeth L. Beidler, Jr., his only heirs at law and next of kin.

4. Your petitioners duly qualified as such executors and ever since said January 28, 1925, have been and still are, acting as such. There are no other executors, domiciliary or ancillary, of the estate of said Francis Beidler, deceased, in Illinois or elsewhere, and no other administration of such estate, or of the goods and chattels of said deceased, or of any part thereof, has been granted.

5. Among other personalty owned by the deceased prior to his death and now a part of the estate in course of administration by your petitioners, are the following assets in respect of which an inheritance tax was assessed by the South Carolina Tax Commission:

(a) 8,000 shares of the par value of $100 each, of the capital stock of Santee River Cypress Lumber Company, a south Carolina corporation.

(b) An indebtedness on open account of $556,864.22 due from said Santee River Cypress Lumber Company to said deceased for moneys from time to time advanced by him for its account.

(c) An indebtedness of $64,672. also due from said [fol. 151] corporation to said deceased, for dividends theretofore declared on said 8,000 shares of stock and remaining unpaid.

6. Your petitioners concede and have at all times conceded that said 8,000 shares of the capital stock of Santee River Cypress Lumber Company are property within the State of South Carolina and that said state may constitutionally impose a tax upon the transfer thereof; but as to the said two items of indebtedness described in clauses (b) and (c) of the preceding paragraph 5 and each of them, your petitioners insisted before said South Carolina Tax

Commission and, on appeal from its assessment, before said Supreme Court of the State of South Carolina, and still insist that said debts are not property within the State of South Carolina and are not subject to the jurisdiction thereof and that said state may not, consistently with the Constitution of the United States, impose a tax upon the transfer by will of said debts and that the Statute of the state of South Carolina providing for the imposition of such a tax, is repugnant to the Constitution of the United States and particularly is in contravention of the 14th Amendment to the Constitution of the United States and deprives your petitioners of property without due process of law and denies to your petitioners the equal protection of the laws.

7. Your petitioners contend before said South Carolina Tax Commission and before the Supreme Court of South Carolina that the situs of said debts for purposes of taxation is in Illinois, the domicile of the creditor and not in South Carolina, the domicile of the debtor, and that the succession thereto is governed by the laws of Illinois and not of South Carolina, and that consequently, according to the principles set forth by the Supreme Court of South Carolina in Fuller v. Tax Commission, 128 S. C. 14 and by the Supreme Court of the United States in Blackstone v. [fol. 152] Miller, 188 U. S. 189, the testamentary succession to such debts could not be taxable in South Carolina unless ancillary administration therein was necessary or resort in some form to its laws or courts required in order to complete and make effectual the tranfer operated by the laws of the testator's domicile.

8. It appeared before the Tax Commission that in 1920 the Santee River Cypress Lumber Company sold to Brooklyn Cooperage Company, a New York corporation, a large quantity of timber for a sum of nearly Five Million Dollars payable in equal quarterly installments during a period of twenty years, such payment being guaranteed by the American Sugar Refinery Company and that over $3,500,000 of said purchase price was still unpaid. It further appeared that both Brooklyn Cooperage Company and American Sugar Refining Company were amply solvent and possessed property and maintained places of business in the States of New York, Massachusetts, Maryland and

Pennsylvania and also did business in Missouri and Arkansas. Evidence was offered as to the laws of these states demonstrating that in each of them an attachment or garnishment suit might have been brought on behalf of the estate of Francis Beidler against the Santee River Cypress Lumber Company as a non-resident and jurisdiction obtained by service upon Brooklyn Cooperage Company and American Sugar Refining Company or one of them as garnishee and in such suit (the indebtedness of the garnishees to the Santee Company exceeding the latter's debt to the deceased) judgment against the garnishee and execution against its property would have afforded complete relief making it unnecessary in any event to resort to the courts or laws of South Carolina. Hence the only basis upon which South Carolina could constitutionally tax the transfer of said debts was wholly lacking in fact.

9. Notwithstanding the premises, said South Carolina Tax Commission ruled that all the items mentioned in said paragraph 5 were property within the State of South Carolina and that the transfer thereof by the will of said de- [fol. 153] ceased was taxable under the laws of South Carolina, and said South Carolina Tax Commission assessed the gross value thereof at the sum of Two Million two hundred fifty-three thousand five hundred thirty-six dollars and twenty-two cents ($2,253,536.22) and levied thereon inheritance taxes amounting to the sum of One hundred forty-four thousand one hundred six dollars and ten cents ($144,106.10), which taxes, under the provisions of the laws of South Carolina, though assessed and levied in respect of the several interests passing respectively to individual legatees and beneficiaries, are payable to the State Treasurer by the executors of the estate at the expiration of one year after the date of their qualification, and if not so paid within such year, bear interest at the rate of ten per centum per annum.

10. Within the time and in the manner allowed by law your petitioners appealed said assessment from said South Carolina Tax Commission to the Supreme Court of South Carolina upon the following, among other, grounds of exception, viz:

"It is submitted that the South Carolina Tax Commission erred in assessing an Inheritance Tax upon the items

of Five hundred fifty-six thousand eight hundred sixty-four and 22/100 ($556,864.22) dollars and of Sixty-four thousand six hundred seventy-two ($64,672) dollars due by the Santee River Cypress Lumber Company to Francis Beidler at the date of his death, for the reasons that the amendment to the Inheritance Tax Law of South Carolina passed in 1924 was not of force at the date of the death of Francis Beidler and is not retroactive and that under the facts and law submitted to the Tax Commission it appears that said debts are not property within the State of South Carolina, it being a fact that said debts were owned by the decedent at the place of his legal residence in Illinois, and it further being a fact that it is not essential for the collection of said debts to have ancillary letters of administration taken out in the State of South Carolina or to resort to the courts and laws of this State for said purpose at all, or, certainly not, in any manner except under the full faith and credit clause of the Federal Constitution. It, therefore, being a fact that said debts are not property within the State of South Carolina, but are property within another State, it is submitted that the assessment of an inheritance tax thereupon in South Carolina is in contravention of the 14th Amendment of the Constitution of the United States in that so to do is to deprive Appellants of property without due process of law and to deny them the equal protection of law."

[fol. 154] 11. The statute of South Carolina as enacted in 1922 and in force at the time of the death of said Francis Beidler, read in part as follows:

"A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise. * * * * * * b. When the transfer is by will or intestate laws of property within the state, and the decedent was a non-resident of the State at the time of his death."

On March 26, 1924, three weeks after Francis Beidler's death, the act was amended by inserting the words:

"And such transfer shall be held to include all debts and all obligations, secured and unsecured, owed by any resident, a citizen, person or corporation of this State to any

non-resident, and all property and the rights of any nature whatsoever over which this State has jurisdiction to enforce the payment of the tax."

12. The Supreme Court of South Carolina in words stated that this amendment was not retroactive but in effect gave to the prior statute the same construction as if it had contained the amending words, and while modifying the assessment of the Tax Commission in certain minor points, sustained the Commission as to the taxability of the transfers of the debts. The opinion of the court was filed on May 27, 1927, and on June 7th, 1927, a petition for rehearing was filed by your petitioners and was pending until September 22, 1927, on which day it was denied, and the judgment of said Supreme Court of South Carolina thereupon became final.

13. Your petitioners file herewith their assignment of errors, setting out therein separately and particularly each error asserted, and your petitioners also present herewith security for costs in connection with the prosecution of the writ of error herein prayed.

Wherefore, in consideration of the premises, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of South Carolina and the judges [fol. 155] thereof to the end that the record and proceedings of said suit may be removed into the said Supreme Court of the United States and, the same being therein inspected, the errors complained of by your petitioners may be corrected and the said judgment of the said Supreme Court of the State of South Carolina be reversed.

And your petitioners will ever pray, etc.

France Beidler, II, George Engelking, as Executors of the Estate of Francis Beidler, Deceased, by Hendersons & Talley, P. F. Henderson, Their Attorneys.

[fol. 156] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ORDER ALLOWING WRIT OF ERROR

The above entitled matter coming on to be heard, this 19th day of December, 1927, upon the petition of the Appellants therein for a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of South Carolina, and upon the Assignments of Error presented with said petition, and it appearing to me from an examination of said petition and the assignments of error and of the record in this suit, that said petition and assignments of error are in due form and said application ought to be granted and that a transcript of the record and proceedings, upon which the judgment of this Court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in petition, that such proceeding may be had as would be just in the premises, petitioners entering into a proper bond in accordance with law, which bond is fixed at One thousand Dollars, it further appearing that the Tax involved herein has been paid under protest, or under a stipulation as to its return should the same be finally adjudged.

It is therefore ordered, the bond above provided for having been executed and exhibited to me, that the same be approved; that the writ of error be allowed and that a true copy of the record, properly certified, be transmitted to the Supreme Court of the United States, for such proceedings as may be determined by and in said Court.

R. C. Watts, Chief Justice of the Supreme Court of South Carolina.

[fols. 157 & 158] Bond on writ of error for $1,000 approved; omitted in printing.

[fol. 159] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

WRIT OF ERROR

The President of the United States to the Honorable Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of judgment, of a case which in said Court before you between Francis Beidler II, and George Engelking, Executors of the last Will and Testament and Estate of Francis Beidler and the South Carolina Tax Commission, your Court being the highest Court of said State having jurisdiction to render judgment in the case, there was drawn in question, as applying to said case, the validity of a Statute of your State on the ground of its being repugnant to the Constitution of the United States and the Fourteenth Amendment thereof and the decision of your Court was in favor of its validity, and there being manifest error in said decision greatly to the damage of petitioners in error, and we being willing that if there is error it should [fol. 160] be duly corrected, we do, therefore, command you, if judgment be therein given, that under the seal of your Court you send the record and proceedings had in said cause to the Supreme Court of the United States, together with this writ so that you have the same at Washington, D. C. on the 3rd day of January, 1928, at the Supreme Court to be then and there held, that the record may be inspected by the said Court and justice done.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, this 19th day of December 1927.

Allowed. R. C. Watts, Chief Justice of the Supreme Court of South Carolina.

Rich W. Watson, Clerk U. S. D. Court, Eastern Dist. of S. C.

[fol. 161] Certificate of lodgment omitted in printing.

[fols. 162 & 163] Citation, in unusual form, showing service on John M. Daniel, omitted in printing.

[fol. 164] Return to writ of error omitted in printing.

[fol. 165] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Jan. 3, 1928

The plaintiffs in error hereby designate as the points upon which they rely to reverse the judgment of the Supreme Court of South Carolina, the points set out in the assignments of error, to-wit:

That the Supreme Court of South Carolina erred in holding the debts in question were property within South Carolina; in holding that the Act approved February 23, 1922, referred to in said assignments of error, if applicable to the debts in question, was not repugnant to the Constitution of the United States and its Fourteenth Amendment, and that it did not deprive Appellants of property without due process of law; in holding that the debts in question were property within the State of South Carolina; in failing to hold that the situs of said debts were in the State of Illinois and not in the State of South Carolina, and in not holding that said debts might have been collected without the appointment of an ancillary Adminis-
[fol. 166] trator in the State of South Carolina or otherwise, in any of the following states, to-wit: New York, Massachusetts, Maryland, Pennsylvania, Missouri, or Arkansas; and that said Court erred in not holding that inasmuch as said debts could have been effectually collected elsewhere than in South Carolina that they were not property within the State of South Carolina, and that the imposition of an inheritance tax thereon by the State of South Carolina would amount to depriving Appellants of property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

As material to a proper presentation of the above stated points, the plaintiffs in error designate the following items of the record to be printed by the Court:

Case containing exceptions to South Carolina Supreme Court (eliminating therefrom all reference to Issues II, III and IV, which matters are not involved in the appeal to The United States Supreme Court.)

Petition for rehearing.
Order on petition for rehearing.
Petition for stay of remittitur.
Order staying remittitur.
Certificate of Clerk.
Assignment of error.
Petition for writ of error.
Order allowing writ.
Bond.
Writ of error.
Certificate of lodgment.
[fol. 167] Citation and service.
Return to writ of error.
Præcipe.

Hendersons & Salley, P. F. Henderson, Attorneys for Plaintiffs in Error.

Service of præcipe accepted this 19th day of December 1927.

John M. Daniel, Attorney General for South Carolina. J. Fraser Lyon, Attorney for Defendant in Error.

I agree that the items of the record as set forth above shall constitute the brief to be printed by the Clerk.

—— ——, Attorney General for South Carolina.
—— ——, Attorney for Defendant in Error.

[fol. 168] [File endorsement omitted.]

Endorsed on cover: File No. 33,131. South Carolina Supreme Court. Term No. 679. Francis Beidler, II, and George Engelking, as executors of the last will and testament of Francis Beidler, plaintiffs in error, vs. South Carolina Tax Commission. Filed January 3d, 1928. File No. 33,131.

IN SUPREME COURT OF THE UNITED STATES

In Error to the Supreme Court of the State of South Carolina

STIPULATION AND ADDITION TO RECORD—Filed June 5, 1928

The attached "Supplements to Case," as the same were submitted to the Supreme Court of South Carolina, having inadvertently been omitted in the preparation of the Transcript of Record to the Supreme Court of the United States herein and it being the desire of counsel to supply said omission,

It is now stipulated and agreed, that the Clerk of the United States Supreme Court be requested and authorized to add to the Transcript of Record upon which this cause is to be heard by the United States Supreme Court, the attached Supplements thereto as certified by the Clerk of the Supreme Court of the State of South Carolina.

We Consent:

Arthur B. Schaffner, Hendersons & Salley, P. F. Hendersons, Counsel for Plaintiffs in Error. Jno. M. Daniel, Attorney General, J. Fraser Lyon, Counsel for Defendant in Error.

IN SUPREME COURT OF SOUTH CAROLINA

CERTIFICATE

I, J. B. Westbrook, Clerk of the Supreme Court of South Carolina, do certify that the attached two printed documents each containing respectively twelve pages, which are identified by my signature, constitute true copies of Supplements to the Case on Appeal which were before the Supreme Court of South Carolina upon its hearing of the above entitled matter. Said Supplements should both have been included in the Transcript of Record sent up by me to the Supreme Court of the United States but they were inadvertently omitted.

Witness my hand and the seal of the Supreme Court of South Carolina, this 2d day of June, 1928.

J. B. Westbrook, Clerk Supreme Court of S. C.
(Seal Supreme Court of South Carolina.)

THE STATE OF SOUTH CAROLINA:

IN THE SUPREME COURT

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of FRANCIS BEIDLER, Appellants,

against

SOUTH CAROLINA TAX COMMISSION, Respondent

SUPPLEMENT TO CASE ON APPEAL

Arthur B. Schaffner, of Chicago, Hendersons & Salley, Appellants' Attorneys.

John M. Daniel, Attorney General, J. Fraser Lyon, N. A. Turner, Respondent's Attorneys.

A true copy:

J. B. Westbrook, Clerk Supreme Court of South Carolina. (Seal Supreme Court of South Carolina.)

Statutes and Decisions

The following statutes and decisions of appellate Courts of the states named hereinafter were offered in evidence by the executors of the estate of Beidler before the South Carolina Tax Commission and are now printed by consent and presented to the Supreme Court of South Carolina in this supplement to the "case on appeals."

New York

New York Civil Practice Act

Article 25—Summons

Sec. 232. "Order for service of summons by publication.—An order directing the service of a summons upon a

defendant, by publication, may be made in either of the following cases; the order must be founded upon a verified complaint showing the defendant to be served, or upon a verified complaint to recover a sum of money only and proof by affidavit that a warrant of attachment, granted in the action, has been levied upon property of the defendant within the state, and proof by affidavit of the additional facts required by this section; and also, where the application is made upon the ground that the defendant is a foreign corporation or not a resident of the state * * * that the plaintiff, with due diligence, has been or will be unable to make personal service of the summons."

Sec. 234. "The order of service of a summons by publication may be made by the Court or by a Judge thereof or the County Judge of the county where the action is triable or in which the attorney for the applicant resides."

Article 35—Judgment

Sec. 493. "Judgment by default where service without state or not personal.—

1. Where a summons was served upon a defendant without the state or otherwise than personally, if the defendant does not demand a copy of the complaint or plead, as the case requires, within twenty days after the service is complete, the plaintiff may apply to the Court or a Judge thereof for the judgment demanded in the complaint.

2. A judgment shall not be rendered for a sum of money only, upon application made hereunder, except in an action (a) for breach of contract, express or implied, other than a contract to marry, (b) wrongful conversion of personal property, (c) an injury to person or property in consequence of negligence, fraud or other wrongful act; nor, in such an action, where the defendant is a non-resident or a foreign corporation, and has not appeared, unless the plaintiff upon such application shall file proof that a warrant of attachment, granted in the action, has been levied upon property of the defendant."

Article 54—Attachment

Sec. 905. "Service of summons if warrant previously granted.—If the warrant be granted before the summons is

served, personal service of the summons must be made upon the defendant against whose property the warrant is granted, within thirty days after the granting thereof; or else before the expiration of the same time, service of the summons by publication must be commenced, or the service thereof must be made without the state, pursuant to an order obtained therefor, as prescribed by law; and if publication has been, or is thereafter commenced the service must be made complete by the continuance thereof."

Rules of Civil Practice

Rule 192. Proceedings on application for default judgment if service without the state or not personally.—The following regulations shall apply to an application to a Court, or to a Judge thereof, for the judgment demanded in a complaint if the summons was served on the defendant without the state or otherwise than personally, and the defendant is in default.

1. On such an application, the plaintiff must file proof that the service is complete, and proof by affidavit of the defendant's default.

2. In actions for a sum of money only, specified in the civil practice act, if the defendant is a non-resident or a foreign corporation, the plaintiff must produce and file proof by affidavit that a warrant of attachment granted in the action has been levied on the property of the defendant, containing a description of the property so attached, with a statement of the value thereof according to the inventory.

3. * * *

4. If the defendant be a non-resident, or a foreign corporation, the Court or Judge to whom such application is made must require the plaintiff or his agent or attorney to be examined on oath respecting any payments to the plaintiff or to any one for his use on account of his demand, and must render the judgment to which the plaintiff is entitled.

Maryland

Public General Laws of Maryland (Art. 9)

Attachments Against Non-resident and Absconding Debtors

1. Every person and every body-corporate that has the right to become a plaintiff in any action or proceeding before any judicial tribunal in this state, shall have the right to become a plaintiff in an attachment against a non-resident of this state or against a person absconding.

2. Every person who doth not reside in this state, and every person who absconds, may be made a defendant in an attachment; and any corporation not chartered by this state, or corporation chartered by this state, but not having the president or a majority of the directors or managers thereof residing in this state, may be made a defendant, as other non-residents.

3. No attachment shall issue (except as hereinafter mentioned), unless there be an affidavit that the debtor is bona fide indebted to the creditor in the sum of —, over and above all discounts; and at the time of making the affidavit, the creditor shall produce the bond, account or other evidences, of debt, by which the said debtor is so indebted; and shall also make affidavit that he knows, or is creditably informed and verily believes that the said debtor is not a citizen of this state, and that he doth know, or is creditably informed and verily believes, that the said debtor hath absconded.

4. The affidavit required by the preceding section may be made before any justice of the peace or any Judge of a Court of law of this state, or before any Judge of a Court of record of the United States, or of any state, district or territory of the United States, or before a commissioner appointed by the state to take acknowledgements of deeds or before a Notary Public or if out of the United States, before a Consul or Vice-Consul of the United States; or the affidavit may be made before the Clerk of the Court from which the attachment shall issue.

5. If the affidavit is made in this state, and before a Justice of the Peace or Judge in any other county than that

in which the attachment is to be issued, there shall also be a certificate, under the seal of the Court, from the Clerk of the Circuit Court for the county in which it is made, that the Justice of the Peace or Judge before whom the said affidavit was made, was, at the time the same was made, a Justice of the Peace or Judge; or the same may be certified by the Clerk of the Superior Court of Baltimore City, when the affidavit is made in that city; or if the affidavit be made out of the state, and before a Judge of a Court of Record, there shall be a certificate from the clerk of said Court, under the seal thereof, that at the time the same was made, he was a Judge of said Court, and that the same is a Court of Record; or if made before a commissioner of this state, the same shall be certified under his official seal.

6. The affidavit required by the preceding sections may be made by the creditor, or one of them where there are more than one, or by the agent of the creditor or creditors; by the president, cashier or other officer of a corporation; by any executor or administrator; or where the attachment is to be issued in the name or in behalf of an infant, by the guardian of such infant or by the infant himself; or by the husband of a feme covert, or by the committee of a lunatic.

7. Upon making the affidavit and producing the proofs before the Clerk of the Court from which such attachment is to issue, or upon presenting to said Clerk the affidavit and proofs when said affidavit is not made before him, he shall issue an attachment against the lands, tenements, goods, chattels and creditors of said debtor.

8. There shall be issued with every attachment a writ of summons against the defendant, and a declaration or short note, expressing the plaintiff's cause of action, shall be filed, and a copy thereof shall be sent with the writ to be set up at the Court house door by the Sheriff, or other officer.

9. Any kind of property or credits belonging to the defendant, in the plaintiff's own hands, or in the hands of any one else, may be attached; and credits may be attached which shall not then be due.

10. Every attachment issued under the preceding sections shall contain a clause commanding the Sheriff or other officer, at the time of executing the said attachment, to make

known to each person in whose hands or possession the lands, tenements, goods, chattels and credits so attached are, if to him it shall seem meet, to be and appear on the return of such attachment before the Court out of which it issued, to show cause why such lands, tenements, goods chattels or credits so attached should not be condemned and execution thereof had and made as in other cases of recoveries and judgments given in Courts of Record.

11. If neither the defendant nor the garnishee in whose hands the property or credits may be attached shall appear at the return of the attachment, the Court shall and may condemn the property and credits so attached, as provided in Section 13, and award execution thereof; provided, that no such execution shall issue unless the plaintiff give bond or sufficient security before the Court awarding the execution, to make restitution of the lands, tenements, goods, chattels, or credits so as aforesaid condemned, or the value thereof, if the defendant shall at any time within a year and a day—to be accounted from the return of said attachment—appear to the said original action, and make it appear that the claim of the said plaintiff, or some part thereof, is not due to the said plaintiff.

Missouri

Civil Procedure—General Code

Sec. 1196. Orders of publication.—In suits of partition divorce, attachment * * * , if the plaintiff or other person for him shall allege in his petition, or at the time of filing same, or at any time thereafter, shall file an affdavit stating that part or all of the defendants are non-residents of the state, or is a corporation of another state, kingdom or country, and cannot be served in this state in the manner prescribed in this chapter * * * the Court in which said suit is brought * * * shall make an order directing to the non-residents or absentees, notifying them of the commencement of the suit, and stating briefly the object and general nature of the petition * * * and requiring such defendant or defendants to appear on a day to be named therein and answer the petition, or that the petition will be taken as confessed. If in any case there shall not

be sufficient time to make publication to the first term the order shall be made returnable to the next term thereafter that will allow sufficient time for such publication.

Sec. 1198. Publication to issue on return of non est.—When in any of the cases contained in Section 1196, summons shall be issued against any defendant and the Sheriff to whom it is directed shall make return that the defendants cannot be found, the Court being first satisfied that process cannot be served, shall make an order as is required in said section.

Sec. 1203. Orders of publication to be published, when and how long.—Every order against non-resident, absent or unknown defendants shall be published in some newspaper published in the county where suits is instituted, if there be a paper published there, which the plaintiff or his attorney of record may designate; if not, then in some paper published in this state, which the plaintiff or his attorney of record may designate as most likely to give notice to the person to be notified; the publication shall be for four weeks successively, published at least once a week, the last insertion to be at least fifteen days before the commencement of the term at which the defendant is required to appear.

Judgments and Proceedings Thereon.

Sec. 1524. Judgments, interlocutory, when entered.—If the defendant shall fail to file his answer or other pleading within the time prescribed by law or the rules of practice of the Court, and serve a copy thereof upon the adverse party, or his attorney, when the same is required, an interlocutory judgment shall be given against him by default.

Sec. 1529. Judgment by default. How proceeded on to final judgment.—Whenever an interlocutory judgment shall be rendered for the plaintiff by default nil dicit, * * * and the demand is ascertained by such instrument or the record of any such judgment, the Court shall assess the damages and final judgment shall be given thereon.

Sec. 1871. Debts not yet due to the defendant may be attached, but no execution shall be awarded against the garnishee for debts until they shall become due.

Also decisions of appellate Court in re: Posey v. Buchner, 3 Mo., 604.

Graham v. Bradbury, 7 Mo., 281.
Wyeth Hardware Co. v. Lang, 127 Mo., 242.
Baisley v. Baisley, 113 Mo., 545.
Howland v. Rwy., 134 Mo., 474.
McAllister v. Insurance Co., 28 Mo., 214.

Arkansas

Sec. 507. "Mode of Executing.—The order of attachment shall be executed by the Sheriff or other officer without delay in the following manner:

First. Upon real property * * *.

Second. Upon other personal property by delivering a copy of the order, with a notice specifying the property attached, to the person holding the same, or, as to a debt or demand, to the person owing it; or, as to stock in a corporation, or property held, or a debt or demand owing by it, to the chief officer, or to the secretary, cashier, treasurer, or managing agent thereof, and by summoning the person or corporation to answer as a garnishee in the action. The Sheriff shall deliver copies to and summon such persons as garnishees as the plaintiff may direct."

Sec. 1159. "Warning Order.—Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action (a), that he had made diligent inquiry, and that it is his information and belief that the defendant is:

First. A foreign corporation, having no agent in this state; or,

Second. A non-resident of this state,

The clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order."

Sec. 1160. "Publication.—The Court may make the warning order upon the requisite facts being satisfactory shown

by affidavit or other proof. Warning orders shall be published weekly for at least four weeks."

Sec. 1162. "When service complete.—A defendant against whom a warning order has been made and published shall, upon completion of the publication of the warning order for the four weeks required by law, be deemed to have been constructively summoned upon the date of the making of the order."

Judgments and Decrees on Constructive Service

Sec. 6261. "Prerequisites to Judgment.—Before judgment is rendered against a defendant constructively summoned, and who has not appeared, it shall be necessary:

First. An attorney be appointed at least thirty days before the judgment is rendered to defend for the defendant and inform him of the action and of such other matters as may be useful to him in preparing for his defense. He may take any step in the progress of the action, except filing an answer, without it having the effect of entering the appearance of such defendant. The attorney may be appointed by the clerk when the warning order is made, or by the Court, and shall receive a reasonable compensation for his services to be paid by the plaintiff and taxed in the costs.

Second. A bond be executed to such defendant by one or more sufficient sureties of the plaintiff, to the effect that if the defendant, within the period prescribed by law, shall appear, make defense and set aside the judgment, the plaintiff shall restore to him the property taken under any attachment in the action, or under the judgment therein, the restoration of which may be adjudged, and pay to the defendant such sums of money as the Court may award to him."

Sec. 6266. Provides that defendant may, within two years, move to have the action retired.

Sec. 6267. "How period reduced to one year.—The plaintiff may at any time after judgment cause a certified copy thereof to be served on a defendant constructively summoned; whereupon the period in which such defendant is

allowed to appear and have a new trial shall be reduced to one year after such service. The service of the copy of the judgment * * * if out of the state (shall be made) in the manner prescribed in Section 1157 as to the service of a copy of the complaint and summons and proof thereof."

Also the following decisions of appellate Courts:

Kansas City, etc., Rwy. Co. v. Parker, 69 Ark., 401.
Rwy. Co. v. Vanderberg, 91 Ark., 251.
Dunnegan v. Byers, 17 Ark., 492.

Massachusetts

Decision of appellate Court in re: Bayer v. Lovelace, 204 Mass., 327; 90 N. E., 538.

Pennsylvania

Decisions in appellate Courts of Pennsylvania in the following cases:

Glenny v. Boyd, 26 Pa. Sup., 386.
Wolf v. Wolf, 72 Pa. Sup., 91.
G. N. Molding Co. v. Philadelphia Picture Framing and Molding Co., 37 Pa., 210.
Wanamaker v. Stevens, 18 Phila., 336 (S. C. Pa. C. C., 317.)

STATE OF SOUTH CAROLINA:

IN THE SUPREME COURT

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Estate of Francis Beidler, Appellants,

vs.

SOUTH CAROLINA TAX COMMISSION, Respondent

SUPPLEMENT TO CASE

Copy of Santee River Cypress Lumber Company Account Taken from the Books of Francis Beidler Which Was Kept by Him in His Office in Chicago, Illinois

SANTEE RIVER CYPRESS LUMBER CO. ACCOUNT

Debits

1907.		
Dec. 2.	Francis Beidler & Co. check	$15,000.00
31.	Ill. Personal Prop. Tax	77.00
1908.		
Jan. 1.	Filing Annual Report	1.00
13.	Francis Beidler & Co. check	10,000.00
Feb. 10.	Bills Receivable	5,000.00
12.	Bills Receivable	5,000.00
13.	Bills Receivable	5,000.00
14.	Bills Receivable	10,000.00
15.	Bills Receivable	5,000.00
17.	Bills Receivable	5,000.00
18.	Bills Receivable	10,000.00
20.	Bills Receivable	5,000.00
21.	Bills Receivable	5,000.00
27.	Bills Receivable	5,000.00
1.	F. B. Trip $50.00, J. D. Grabb $300.00	350.00
1.	Int. on Open Account	150.00
Mar. 6.	Bills Receivable	5,000.00
9.	Bills Receivable	5,000.00
10.	Bills Receivable	5,000.00
11.	Bills Receivable	5,000.00
12.	Bills Receivable	5,000.00
13.	Bills Receivable	5,000.00

	14.	Bills Receivable	5,000 00
	16.	Bills Receivable	10,000 00
	17.	Bills Receivable	5,000 00
	19.	Bills Receivable	10,000 00
	23.	Bills Receivable	10,000 00
	27.	Bills Receivable	5,000 00
Apr.	9.	Bills Receivable	5,000 00
	11.	Bills Receivable	5,000 00
	13.	Bills Receivable	5,000 00
	14.	Bills Receivable	10,000 00
	15.	Bills Receivable	5,000 00
	16.	Bills Receivable	5,000 00
	17.	Bills Receivable	10,000 00
	18.	Bills Receivable	5,000 00
	20.	Bills Receivable	5,000 00
	24.	Bills Receivable	10,000 00
	27.	Bills Receivable	5,000 00
	30.	Int. on Open Account	1,519 50
May	7.	Bills Receivable	5,000 00
	14.	Bills Receivable	10,000 00
	16.	Bills Receivable	10,000 00
	1.	Extra Int. error in figures	3 70
July	1.	Francis Beidler—May trip	50 00
	1.	Int. Open Account to 6-30-08	2,086 07
Aug.	1.	5-1-08 Eutawville Sales	5 35
	1.	Francis Beidler Trip $75.00, Walter Henderson $40.00	115 00
	1.	Eutawville Sales	3 80
	1.	Business Cards	40 00
Sept.	1.	Anti-Trust Affidavit	1 00
	30.	Interest Open Account to 9-30-08	3,194 30
Dec.	31.	Francis Beidler Nov. Trip Exp.	75 00
	31.	Interest Open Account to 12-31-08	3,196 65
1909.			
Jan.	1.	Francis Beidler Jan. Trip Exp.	75 00
Feb.	1.	Filing Annual Report	1 00
Mar.	1.	Francis Beidler, Feb. Trip Exp.	75 00
	1.	Int. Quarter end. 3-31-09	3,325 26
Apr.	1.	Spauling, car fare, etc.	87 15
		Carried Forward	269,431 78

1909.		Brought forward	269,431.78
May	1.	Books, etc. $3.50, Winkler $63.20	66.70
	1.	Francis Beidler May Trip Exp.	70.00
	1.	Spaulding & Winkler	157.25
	1.	Int. 1 month to 5-1-09	1,121.56
June	1.	Francis Beidler Trip Exp. 5-22—6-11-09	85.00
	30.	Int. 2 months to 6-30-09	2,255.65
July	12.	Corn Exchange National Bank	27,000.00
	21.	Corn Exchange National Bank	10,000.00
	23.	Corn Exchange National Bank	10,000.00
	23.	Corn Exchange National Bank	10,000.00
	30.	Francis Beidler Trip Exp. 7-10—7-19-09	70.00
Aug.	26.	Corn Exchange National Bank	10,000.00
	27.	Corn Exchange National Bank	10,000.00
Sept.	1.	Anti-Trust Affidavit	1.00
	1.	Francis Beidler Trip Exp. 9-4—9-16-09	72.00
	30.	Int. Quarter ending 9-30-09	4,193.89
Oct.	1.	Francis Beidler New York & Boston Trip	80.00
	20.	Francis Beidler Trip Exp. 10-10—10-21-09	69.50
	26.	Check deposited in Corn Exchange Nat. Bank	5,000.00
Dec.	29.	Check deposited in Central Trust Co.	2,000.00
	30.	Francis Beidler Trip Exp. 12-11—12-24-09	70.00
	31.	Int. Quarter ending 12-31-09	4,587.84
1910.			
Jan.	17.	Nat. Assn. Cr. Men—1910 Diary	2.00
Feb.	2.	Jas. A. Rose, Secy. of State	1.00
	10.	Francis Beidler Trip Exp. 1-21—2-11-10	75.00
Mar.	31.	Francis Beidler Trip Exp. 3-10—4-4-10	73.00
Feb.	28.	Jan. and Feb. Interest	3,051.06
Apr.	1.	March interest	1,538.51
	29.	Check deposited in Corn Exc. Nat. Bank	1,000.00
	30.	Interest for April	1,544.79

May 20.	Francis Beidler Trip Exp. 5-1—5-20-10	75 00
20.	Expense Stichal trip in March	35 00
23.	New Corporate Seal	2 00
31.	Interest for May	305 39
Jun. 30.	Interest for June	307 13
July 5.	Francis Beidler Trip Exp. 7-4-10	75 00
15.	Law Bulletin (Pub. Notices)	5 20
18.	Check deposited in Corn Ex. Nat. Bank	3,000 00
28.	Check deposited in Corn Ex. Nat. Bank	15,000 00
30.	Interest for July—5%	330 25
Aug. 2.	Columbian Bank Note, Stock Certificates	40 00
3.	Int. Henry Swart Note due 8-10-11	1,250 00
4.	Deposit in Corn Ex. Nat. Bank	6,000 00
22.	Francis Beidler Exp. 8-8—19-10	90 00
31.	Stock Certificate & Filing Exp.	2 80
31.	Interest Open Account August 5%	430 26
Sep. 10.	Filing Anti-Trust Affidavit	1 00
16.	Law Bulletin—Capital reduction	5 40
30.	Interest for September, 1910	392 27
Oct. 10.	Francis Beidler Trip Exp. 9-24—10-1-10	80 00
31.	October Interest	386 35
Nov. 12.	Credit Men's Diary for 1911	2 00
30.	November interest 5% on $75,296.56	313 73
30.	Francis Beidler Trip Expense Nov.	75 00
Dec. 1.	"Factory" for one year	2 00
19.	Fred Engelking Dep. "James Case"	5 25
31.	Dec. Interest & Comp. for Quarter	333 93
1911.		
Jan. 31.	January Interest 5% on balance	308 25
Feb. 11.	Francis Beidler Trip Exp. 1-25—2-11-11	75 00
28.	Anti-Trust Affidavit, 1911	1 00
Mar. 31.	Interest for March	123 27
Apr. 18.	Francis Beidler Trip Exp. 4-5—4-18-11	75 00
	Carried Forward	402,745 01

	Brought forward	402,745.01
1911.		
May 1.	Interest for April	119.79
30.	Interest for May	124.62
June 30.	Interest for June	121.12
July 12.	Int. Henry Swart Note due 8-12-12	1,257.00
5.	Francis Beidler Trip Exp. 6-24—7-5-11	75.00
31.	July Interest on balance	121.62
Aug. 31.	Kractzer Advance	50.00
31.	Supt. Ads.	4.90
31.	Supt. Ads.	5.43
Sep. 5.	Francis Beidler Trip Exp. 8-26—9-5-11	75.00
1.	Aug. interest on balance, 5%	122.45
18.	Filing Anti-Trust Affidavit	1.00
Oct. 12.	Exp. State Tax Board Graham & Graham	15.00
Sept. 30.	Interest for September	123.30
Nov. 14.	Francis Beidler Trip Exp. 11-4—11-14-11	75.00
29.	Gilmer (Steno.) Trip to Santee	35.45
Oct. 30.	Interest for October	123.82
Nov. 30.	Interest for November	124.73
Dec. 2.	Check Deposited in Corn Ex. Nat. Bank	2,500.00
31.	Interest for December	139.47
1912.		
Jan. 31.	Interest for January, 6%	163.47
Feb. 14.	University of Chicago check	200,000.00
15.	Francis Beidler Trip Exp. 2-3—2-15-12	75.00
26.	University of Chicago check	200,000.00
29.	Filing Report—Officers' Names	1.00
Mar. 19.	University of Chicago check	95,000.00
Feb. 29.	Interest for February, 6%	709.34
Mar. 31.	Interest for March, 6%	2,174.86
Apr. 30.	Diff. in balance to 3-31-1912	.15
30.	Interest for April & Comp. 3 months	2,406.70
May 27.	Check deposited in Corn Ex. Nat. Bank	20,000.00
31.	Interest for May 6%	2,500.26

June	6.	Telegram sent by M. B. Cross	.60
	2.	Big Salkahatchie Note & Int.	16,739.39
	27.	Big Salkahatchie Int. 2 Notes	1,895.02
	30.	Interest for June 6%	2,549.65
July	31.	Interest for July, 6%	2,512.17
	31.	Interest for one day July, 6%	78.73
Aug.	31.	Interest for August 6%	2,590.90
Sep.	13.	C. J. Doyle, Secy. of State	1.00
	30.	Interest for September, 6%	2,512.17
Oct.	24.	Francis Beidler Trip Exp.	68.00
	31.	Mileage Book 419 miles at 2c	8.38
	31.	Interest for October, 6%	2,609.83
Nov.	30.	Interest for November, 6%	2,526.02
Dec.	31.	Interest for December, 6%	2,636.72
	31.	Francis Beidler Expense	24.00
1913.			
Jan.	1.	Error in December Interest	142.93
	31.	Interest for January, 6%	2,480.70
Feb.	11.	Francis Beidler Trip Expense	68.00
	24.	Check deposited in Corn Ex. Nat. Bank	20,000.00
Mar.	3.	Check deposited in Corn Ex. Nat. Bank	20,000.00
	12.	Check deposited in Corn Ex. Nat. Bank	15,000.00
Apr.	8.	Check deposited in Corn Ex. Nat. Bank	15,000.00
	24.	Check deposited in Corn Ex. Nat. Bank	5,000.00
June	7.	Big Salkehatchie Note and Int. on same and one ending 6-2-1914 for one year at 6%	17,694.83
Feb.	28.	Interest for February, 6%	2,257.30
Mar.	31.	Interest for March, 6%	2,730.99
Apr.	30.	Interest for April, 6%	2,776.62
May	7.	Check deposited in Corn Ex. Nat. Bank	20,000.00
	31.	Interest for May, 6%	2,987.08
July	31.	Advance to Mrs. Lelly in January	65.00
		Carried Forward	1,093,946.52

	Brought Forward	1,093,946.52
1913.		
June 30.	Francis Beidler Trip Expense	68.00
30.	Frank Stevenson & George Engelking Trip Expense	161.65
30.	Interest for June, 6%	2,977.41
July 2.	Check deposited in Corn Ex. Nat. Bank	12,500.00
23.	Check deposited in Corn Ex. Nat. Bank	10,000.00
25.	Check deposited in Corn Ex. Nat. Bank	1,000.00
31.	Interest for July, 6%	3,226.92
Aug. 2.	Check deposited in Corn Ex. Nat. Bank	2,000.00
31.	W. F. Haefner Trip Expense	28.40
31.	Advertising Expense—Daily News	.75
31.	Cash Advance, W. F. Haefner	10.00
31.	Interest for August, 6%	3,279.98
Sept. 4.	Check deposited in Corn Ex. Nat. Bank	10,000.00
26.	Check deposited in Corn Ex. Nat. Bank	10,000.00
30.	Western Union Tel. Co.	2.76
30.	Advertising Expense Daily News	4.80
30.	Filing Anti-Trust Affidavit	1.00
30.	Interest for September, 6%	3,228.26
Oct. 31.	October interest, 6%	3,434.20
Nov. 30.	Interest for November, 6%	3,323.41
Dec. 31.	Interest for December, 6%	3,434.19
1914.		
Jan. 21.	Secretary of State—Filing Report	1.00
26.	Advertising Expense, Chicago Tribune	5.40
4.	Santee Investigation of Fire Expense	1,456.98
2.	Check deposited in Corn Ex. Nat. Bank	10,000.00
15.	Check deposited in Corn Ex. Nat. Bank	25,000.00
May 16.	Check deposited in Corn Ex. Nat. Bank	50,000.00

June 2.	Collection of Salkehatchie Note & Int.	16,739.39
Feb. 5.	Advertising Expense—Daily News	4.80
28.	Postage stamps	.55
Mar. 10.	Western Union Tel. Co.	.61
May 28.	Postage Stamps	2.12
July 14.	Check deposited in Corn Ex. Nat. Bank	10,000.00
Oct. 2.	Filing Anti-Trust Affidavit	1.00
Dec. 31.	Filing Annual Report	1.00
1915.		
Apr. 7.	Check deposited in Corn Ex. Nat. Bank	5,000.00
May 4.	Check deposited in Corn Ex. Nat. Bank	25,000.00
21.	Check deposited in Corn Ex. Nat. Bank	25,000.00
June 22.	Check to Santee River Cypress Lbr. Co.	12,000.00
Nov. 26.	University of Chg. Loan	143,153.48
Dec. 22.	Check deposited in Corn Ex. Nat. Bank	5,000.00
1916.		
Mar. 31.	Filing Annual Report	1.00
Oct. 30.	Filing Anti-Trust Affidavit	1.00
1917.		
Feb. 28.	Miscellaneous Expense Items	26.78
Mar. 31.	Western Union Tel. Co.	.60
May 12.	Black River Cypress Co. Note & Int.	3,185.16
May 31.	Express Expense	.81
Sept. 30.	Filing Anti-Trust Affidavit	1.00
1918.		
Mar. 31.	Filing Annual Report	1.00
1919.		
Feb. 13.	Check deposited in Corn Ex. Nat. Bank	15,000.00
1920.		
Jan. 12.	Check deposited in Corn Ex. Nat. Bank	15,000.00
Feb. 18.	Check deposited in Corn Ex. Nat. Bank	10,000.00
Mar. 31.	Revenue Stamps	350.05

May 11.	Check deposited in Corn Ex. Nat. Bank	10,000.00
17.	Check deposited in Corn Ex. Nat. Bank	5,000.00
June 23.	Check deposited in Corn Ex. Nat. Bank	10,000.00
	Carried Forward	1,559,571.98
1920.	Brought Forward	$1,559,571.98
Aug. 23.	Check deposited in Corn Ex. Nat. Bank	20,000.00
Nov. 22.	Check deposited in Corn Ex. Nat. Bank	25,000.00
27.	Check deposited in Corn Ex. Nat. Bank	10,000.00
Dec. 30.	Check deposited in Corn Ex. Nat. Bank	10,000.00
31.	A. B. Schaffner expenses in re Brooklyn Cooperage Co. deal	700.00
1922.		
Dec. 2.	Check deposited in Corn Ex. Nat. Bank	5,000.00
	Total debits	1,630,271.98

Credits

1908.		
Jan. 1.	Check for Personal Property Tax	77.00
Apr. 1.	Check for filing Report 1-1-08	1.00
May 1.	Percentage Eutawville Sales	5.35
Oct. 1.	For Francis Beidler Exp. $40.00; Anti-Trust Affidavit $1.00	41.00
Aug. 15.	For Cash advanced W. Henderson	40.00
1909.		
Feb. 1.	Check for Charge of 8-1-08	3.80
Mar. 1.	Check for filing Annual Report	1.00
Oct. 1.	Check for filing Anti-Trust Affidavit	1.00
Nov. 1.	Lumber Reject Adjustment	44.32
1910.		
Jan. 18.	Lumber Reject Adjustment	105.12
Feb. 18.	Check covering $2.00 and $1.00 charges	3.00

May 1.	Transferred—Stock Account	270,000.00
1.	Transferred—M. B. Cross	30,000.00
Aug. 31.	Adjustment of Interest on a-c compounded	32.81
Sep. 12.	Check deposited to Cr. of Francis Beilder	10,000.00
Oct. 31.	Check deposited to Cr. of Francis Beilder	15,000.00
1911.		
Jan. 12.	Check deposited to Cr. of Francis Beidler	8,500.00
1910.		
Dec. 31.	2⅔% Loss, 15,000 shares Santee R. C. L. Co.	40,000.00
1911.		
Feb. 28.	February Interest adjustment	60.65
Mar. 31.	To balance Interest A-c with Cross	3.60
May 1.	For telegraph charge	.60
July 31.	Henry Swart Note Interest	1,257.00
Aug. 31.	For Kraetzer Advance	50.00
31.	For Telegraph charges	1.72
Nov. 30.	For Telegraph charge	.60
Dec. 18.	For Gilmer's Trip Expense	35.45
1912.		
Feb. 23.	(3) Big Salkehatchie Notes	49,475.96
29.	For Telegraph charge	.90
June 26.	Check deposited to Cr. of Francis Beidler	25,000.00
Sep. 21.	Check deposited to Cr. of Francis Beidler	5,000.00
Nov. 30.	For Mrs. B's board on trip to Santee	7.88
Dec. 31.	Francis Beidler's contribution to make good losses in 1912 operation	33,000.00
1913.		
Feb. 28.	For Board Miss Nixon (F. B. Nurse) while at Ferguson	11.00
28.	For Telegraph charges	1.40
Oct. 11.	For Filing Anti-Trust Affidavit	1.00
31.	Credit on a-c overcharge Santee Interest	1.90
Dec. 31.	Amount necessary to make good, Losses in 1913	27,500.00

1914		
Mar. 3.	For Filing Annual Report.....	1.00
1916		
June 19.	Check deposited to Cr. of Francis Beidler	12,000.00
30.	For "ad" in Hill School Record....	25.00
Sep. 30.	Black River Cypress Co. Notes.....	5,819.63
1917		
May 12.	Black River Cypress Co. Note & Int.	3,185.16
Aug. 24.	Check deposited to Cr. of Francis Beidler	7,000.00
1918		
Feb. 1.	(3) Giles Bay Lumber Co. Notes....	28,401.88
1919		
Sep. 30.	Check deposited to Cr. of Francis Beidler	10,000.00
	Carried Forward	581,697.73
	Brought Forward.....	581,697.73
1921		
Jan. 10.	Check deposited to Cr. of Francis Beidler.....	20,000.00
Apr. 8.	Refund on a-c revenue stamps on Santee Stock	210.03
Apr. 21.	Check deposited to Cr. of Francis Beidler	15,000.00
July 7.	Check deposited to Cr. of Francis Beidler	20,000.00
15.	Check deposited to Cr. of Francis Beidler	15,000.00
7.	Check deposited to Cr. of Francis Beidler	15,000.00
Nov. 26.	Check deposited to Cr. of Francis Beidler	60,000.00
1922		
Feb. 1.	Check deposited to Cr. of Francis Beidler	50,000.00
Mar. 29.	Check deposited to Cr. of Francis Beidler	10,000.00

Apr. 5.	Check deposited to Cr. of Francis Beidler	60,000.00
6.	Liberty Bonds in Freeman deal turned over to Francis Beidler	4,000.00
July 5.	Check deposited to Cr. of Francis Beidler	50,000.00
Oct. 4.	Check deposited to Cr. of Francis Beidler	50,000.00
27.	Check deposited to Cr. of Francis Beidler	17,500.00
1923.		
Jan. 4.	Check deposited to Cr. of Francis Beidler	50,000.00
Feb. 3.	Check deposited to Cr. of Francis Beidler	10,000.00
Oct. 3.	Check deposited to Cr. of Francis Beidler	45,000.00
	Total credits	1,073,407.76

Summary

Total debits	$1,630,271.98
Total credits	$1,073.407.76
Balance Due as of March 4, 1924	$556,864.22

It is stipulated and agreed between counsel that the foregoing account taken from the books of Francis Beidler in Chicago, Illinois during his lifetime, may be added to the case herein as a supplement; it, however, being stipulated and agreed that none of the items, either of debt or credit, appearing in said account are in any manner whatsoever questioned herein.

We consent.

Arthur B. Schaffner, J. H. Marion, Hendersons & Talley, Appellant's Attorney. —— ——, Respondent's Attorneys.

A true copy:

J. B. Westbrook, Clerk Supreme Court of South Carolina.

(Seal Supreme Court of South Carolina.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 32

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

ARGUMENT OF ARTHUR B. SCHAFFNER, OF CHICAGO, ILLINOIS, AND OF P. F. HENDERSON, OF HENDERSONS AND SALLEY, OF AIKEN, SOUTH CAROLINA, FOR PLAINTIFFS IN ERROR.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Plaintiffs in Error.

(33,131)

INDEX.

SUBJECT INDEX.

Brief for plaintiffs in error 1
Jurisdiction 2
The facts 2
The statute 4
Argument 5
Blodgett v. Silberman 6
Blackstone v. Miller 11
Has the Blodgett decision affected the Blackstone decision? 13
The rationale of the Blackstone decision as applied to the facts of the Beidler case 15
Construction of the Blackstone decision by New York. 22
Construction of the Blackstone decision by Massachusetts 25
Construction of the Blackstone decision by Minnesota. 27
Construction of the Blackstone decision by South Carolina 35
Construction of the Blackstone decision by Ruling Case Law 37
Construction of the Blackstone decision by United States Supreme Court 37
Summary as to doctrine of Blackstone case 38
Other points in the decision of the Beidler case by the Supreme Court of South Carolina 40
The question of jurisdiction for purposes of administration 41
The question of title to the indebtedness 43
The attachment question 52
The doctrine of making the maxim and the situs yield 53
Summary 57
The business situs question 59
Appendix:
The Beidler estate did not of necessity have to enter the courts of South Carolina to enforce the collection, if resistance were made, of its debt against the Santee Company 70

Page

The ample solvency of the Brookfyn Cooperage Company and the American Sugar Refining Company..... 72
The attachment or garnishment question..... 75
The New York State Law..... 89
The Massachusetts Law..... 91
Pennsylvania Law..... 94
Maryland Law..... 97
Missouri Law..... 98
Arkansas Law..... 101
Publication statutes..... 102

Authorities Cited in the Brief.

Table of Cases.

	Page.
Adams v. Batchelder, 173 Mass., 258; 73 A. S. R., 282	48
Adams v. Colonial Mortgage Co., 82 Miss., 263; 34 So., 482; 17 L. R. A. (N. S.), 138; 100 A. S. R., 633	60
Blackstone v. Miller, 188 U. S., 189	6, 24, 26, 29
Bliss v. Bliss, 221 Mass., 201; 109 N. E., 148; L. R. A., 1916-A, 889	25, 31
Blodgett v. Silberman, 72 L. Ed., 470; — U. S., —	2
Bostwick v. Carr, 165 App. Div., 55; 151 N. Y. S., 74	47
Central Trust Co. v. Wabash, etc., R. C., 29 Fed., 618	31
Chicago, Rock Island & Pacific Ry. Co. v. Sturm, 174 U. S., 710	20
Clinch, In re, 180 N. Y., 300; 73 N. E., 35	24
Craft v. Indiana, etc., R. Co., 166 Ill., 580; 46 N. E., 1132	30
Dial v. Gary, 14 S. C., 571	43
Frick v. Pennsylvania, 268 U. S., 473	2
Fuller v. South Carolina Tax Commission, 128 S. C., 14; 121 S. E., 478	35
Georgia S. R. Co. v. Mercantile Trust Co., 94 Ga., 306; 21 S. E., 701; 32 L. R. A., 208; 47 Am. St. Rep., 153	30
Gibbs, In re, N. Y. Supp., 53	10
Gordon, In re, 186 N. Y., 471; 79 N. E., 722; 10 L. R. A. (N. S.), 1089	22
Graff, In re, 128 Minn., 371	11, 27
Harper v. Butler, 2 Pet., 239	47
Harris v. Hall, 11 Pa. Co., 53; aff. 148 Pa., 345	47
Hayes v. Pratt, 147 U. S., 569	48
Hayward v. Williams, 57 S. C., 235	44
Houdayer, In re, 150 N. Y., 37; 34 L. R. A., 235; 55 A. S. R., 642	10, 24
Hutchins v. Bank, 12 Metc., 421	47
In re Clinch, 180 N. Y., 300; 73 N. E., 35	24
In re Gibbs, N. Y. Supp., 53	10
In re Gordon, 186 N. Y., 471; 79 N. E., 722; 10 L. R. A. (N. S.), 1089	22
In re Graff, 128 Minn., 371	11, 27
In re Houdayer, 150 N. Y., 37; 34 L. R. A., 235; 55 A. S. R., 642	10, 24
In re Romaine, 127 N. Y., 80; 27 N. E., 759; 12 L. R. A., 401	61
International Bridge Co. v. Holland Trust Co., 81 Fed., 422; 26 C. C. A., 469	31

	Page.
Jamison v. Commonwealth, 120 Va., 137; 90 S. E., 640	62
Lawrence v. Nelson, 143 U. S., 222	47
Liverpool L. & G. Insurance Co. of New York v. Board of Assessors, 221 U. S., 346	65
Liverpool v. New Orleans, 221 U. S., 346	56
Maas v. Bank, 176 N. Y., 377	47
Matter of Gordon, 186 N. Y., 471; 79 N. E., 722; 10 L. R. A. (N. S.), 1089	32
McCulloch v. Maryland, 4 Wheat., 316, 429	20
McLaughlin v. Cluff, 240 Pac., 161; 46 L. R. A. (N. S.), 1175, note	10
Metropolitan Life Insurance Co. v. New Orleans, 205 U. S., 395; 51 L. Ed., 853; 27 Sup. Ct. Rep., 490	2, 66
Muller v. Dows, 94 U. S., 444; 24 L. Ed., 207	30, 36
New Orleans v. Stempel, 175 U. S., 309	54, 66
Peterson v. Chemical Bank, 32 N. Y., 21	47
Railey v. Board of Assessors, 44 La. Ann., 765	55
Rand v. Hubbard, 4 Met., 252-260	47
Reat v. People, 201 Ill., 469; 66 N. E., 242	62
Rhode Island Hospital Trust Company v. Doughton, 270 U. S., 69	2
Riverside Mills v. Alabama & Georgia Mfg. Co., 198 U. S., 197; 25 Sup. Ct., 629; 49 L. Ed., 1016	36
Romaine, In re, 127 N. Y., 80; 27 N. E., 759; 12 L. R. A., 401	61
Savings and Loan Society v. Multnomah County, 169 U. S., 421	10
Scher v. Adams, 220 App. Div., 309	47
State Assessors v. Comptoir National D'Escompte, 191 U. S., 388; 48 L. Ed., 232; 24 Sup. Ct. Rep., 109	66
State v. Chadwick, 133 Minn., 117; 157 N. W., 1076; 158 N. W., 637; L. R. A., 1916-E, 1288	11, 28, 36
State (Graff) v. Probate Court of St. Louis County, 128 Minn., 371; 150 N. W., 1094; L. R. A., 1916-A, 901	28
State v. Smith, 68 Miss., 79; 8 South., 294	62
State Tax on Foreign-Held Bonds, 15 Wall., 300	26
St. Louis Rwy. Co. v. Cleere, 76 Ark., 377	47
Union Trust Co. v. Olmsted, 102 N. Y., 729; 7 N. E., 822	30
United States v. Perkins, 163 U. S., 625, 628, 629	20
Walker v. People, 8 A. L. R., 859	15
Weyland v. Park Terrace Co., 202 N. Y., 231; Ann. Cas., 1912-D, 1010	6
Wheeler v. New York, 233 U. S., 446	9, 37

Page

Wilkins v. Ellett, 9 Wall., 740; 108 U. S., 256..... 45, 48
Wolfe, Administrator, v. Bank of Anderson, 123 S. C., 208; 116 S. E., 451..... 49
Wyman v. Halstead, 109 U. S., 654..... 20, 41

CONSTITUTION CITED.

Constitution U. S., Article 4, Section 1..... 30
Constitution U. S., Article XIV of Amendments.....2, 57, 66

STATUTES CITED.

Inheritance Tax Act of South Carolina, Section 1 (*a*) and (*b*) 37
Louisiana Acts, 1890, Chapter 106..... 66
New York Laws, 1896, Chapter 908, p. 868..... 23

TEXTBOOKS AND ENCYCLOPÆDIAS CITED.

Cooley on Taxation (4th Ed.), Section 466..... 61
24 Corpus Juris, 1118..... 49
6 Ruling Case Law, 902, Section 287..... 6
26 Ruling Case Law, 215..... 37
3 U. S. Supreme Court Digest, 3130..... 49

Authorities Cited in the Appendix.

Table of Cases.

	Page
Baisley v. Baisley, 113 Mo., 545	100
Bayer v. Lovelace, 204 Mass., 327; 90 N. E., 538	93
Biggert v. Straub, 193 Mass., 77	94
Blake v. McClung, 172 U. S., 252	88
Bostwick v. Carr, 165 App. Div., 55; 151 N. Y. S., 74	76
Campbell v. Home Insurance Company, 1 S. C., 158	86
Chicago, Rock Island & Pacific Railroad v. Sturm, 174 U. S., 710	94
Clarendon Boat Oar Company, In re, 257 U. S., 534	88
Cole v. Cunningham, 133 U. S., 107	88
Day v. Zillerman, 62 Pa., 72	95
Douglass v. Phenix Ins. Co., 138 N. Y., 209, 219; 34 Am. St. Rep., 448; 33 N. E., 939; 20 L. R. A., 118	84
Dunnegan v. Byers, 17 Ark., 492	102
Edison Electric Company v. Guastavino, No. I, 16 App. Div., 350	91
Embree v. Hanna, 5 Johns., 101	85
Glenny v. Boyd, 26 Pa. Sup., 386	95
Great Northern Moulding Co. v. The Philadelphia Picture Frame and Moulding Co. (1910), 37 Pa., 214	96
Graham v. Bradbury, 70 Mo., 281	99, 100
Harper v. Butler, 2 Pet., 239	76
Harris v. Balk, 198 U. S., 215	77, 94
Harris v. Hall, 11 Pa. Co., 53; 148 Pa., 345	76
Hayes v. Pratt, 147 U. S., 569	76
Howland v. Chicago, Rock Island & Pacific Ry. Co., 134 Mo., 474	101
In re Clarendon Boat Oar Company, 257 U. S., 534	88
Kansas City, Pittsburgh & Gulf Railway Company v. Parker, 86 Am. S. R., 205	85
Kansas City, Pittsburgh & Gulf Ry. Co. v. Parker, 69 Arkansas, 401	102
King v. Cross, 175 U. S., 396	94
Lafitte v. McNeal Marble Company	87
Laurence v. Nelson, 144 U. S., 272	76
Louisville and Nashville Railroad Company v. Deer, 200 U. S., 176	77, 79, 94
Mars v. Virginia Home Insurance Company, 17 S. C., 514	87
McAlvister v. Pennsylvania Insurance Co., 28 Mo., 214	101
New England Loan & Trust Co. v. Brown, 59 Mo. App., 466	100

Page

Pennoyer v. Neff, 95 U. S., — 103
Pennsylvania, P. L., 1097, Section (1)..... 94
Peterson v. Chemical Bank, 32 N. Y., 21..... 76
Plimpton v. Bigelow, 93 N. Y., 592..... 83, 84
Posey v. Buckner, 3 Mo., 604.....98, 100
Rand v. Hubbard, 4 Met., 252-260..... 76
Rothschild v. Knight, 176 Mass., 48..... 94
Rwy. Co. v. Sturm, 174 U. S., 710..... 77
Scher v. Adams, 220 App. Div., 309..... 75
Singer Machine Company v. Smith, 40 S. C., 529..... 71
Snowden v. McDaniel, 7 Mo., 314..... 100
St. Louis Rwy. Co. v. Cleere, 76 Ark., 377..... 76
St. Louis Southwestern Ry. Co. v. Vanderberg, 91 Ark., 251.. 102
Wanamaker v. Stevens, 18 Phila., 336..... 97
Weiner v. American Insurance Company, 224 Pa., 292..... 94
Williams v. Ingersoll, 89 N. Y., 508, 526..... 85
Wolf v. Wolf, 72 Pa. Sup., 91..... 95
Wyeth Hardware & Manufacturing Company v. H. F. Lang & Company, 127 Mo., 242..... 99

CONSTITUTION CITED.

Constitution U. S., Article IV, Section 2..... 88

STATUTES CITED.

Mass. Statutes, 1903, Chapter 437, Section 58..... 93
New York Civil Practice Act, Section 648..... 91
Section 902..... 90
Section 903..... 90
Section 916..... 90
Section 917..... 91
Section 922..... 91
R. L. (Mass.), Chapter 189, Section 1..... 93
R. S. (Mo.), 1889, Section 2009..... 100

ENCYCLOPÆDIAS CITED.

14 A. & E. Enc. of Law, pages 801-2..... 83, 86
2 Ruling Case Law, pages 805-6..... 82

TEXTBOOKS CITED.

Minor on Conflict of Laws, C. 10, p. 270..... 86
Waples on Debtor and Creditor—Situs of Debt, Sections 171, 176, 177..... 86

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FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

BRIEF FOR PLAINTIFFS IN ERROR.

This matter is brought to the Supreme Court of the United States by a writ of error, granted by the chief justice of South Carolina, because there is drawn into question the validity of the Inheritance Tax Act of the State of South Carolina, on the ground of its being repugnant to the Constitution of the United States and especially to the Fourteenth Amendment thereof, in that the statute, as construed and applied by the Supreme Court of South Carolina, levied a succession or

inheritance tax on the transfer and succession of property, to wit, a certain unsecured debt due by a South Carolina corporation to the decedent herein, Francis Beidler, a resident of Chicago, Illinois, which debt constituted property within the jurisdiction of Illinois and not within the jurisdiction of the State of South Carolina. In short, the plaintiff in error submits that the State of South Carolina has attempted to tax a debt which does not constitute property within South Carolina.

The practice of bringing this matter to this Court by writ of error is strictly in accordance with the practice pursued in the case of Blodgett *v.* Silberman, decided April 16, 1928, 72 L. Ed., 470.

The fact that a State has no power to levy an inheritance tax on property not within its borders is universally admitted, and the fact that to attempt to do so by construing an inheritance tax statute as including within its terms property which should be considered as existing outside of the State in question, presents a Federal question and is a proceeding inhibited by the Fourteenth Amendment to the Federal Constitution is definitely decided in Frick *v.* Pennsylvania, 268 U. S., 473; Rhode Island Hospital Trust Company *v.* Doughton, 270 U. S., 69, and Metropolitan Life Insurance Co. *v.* New Orleans, 205 U. S., 395.

The Facts.

An agreed statement of facts is set out in the Transcript of Record (pp. 1-2). Other pertinent facts introduced into the record by the plaintiffs in error and

not controverted by the defendant in error, likewise appear in the record. These facts will be referred to from time to time herein.

The salient facts, for immediate consideration are, that on March 4, 1924, Francis Beidler, a legal resident of Chicago, Illinois, died in said State leaving a Will which has been duly probated in said State, of which Will the plaintiffs in error are executors. At the time of Mr. Beidler's death he owned eight thousand shares of the capital stock of the Santee River Cypress Lumber Company (hereinafter referred to as the Santee Company), a South Carolina corporation, which stock by agreement with the South Carolina Tax Commission, was valued at $1,632,000; upon which the Beidler estate has paid to the State of South Carolina a large inheritance tax. In addition thereto—and this is the matter out of which this litigation arises—the Santee Company was indebted to the decedent at the time of his death in the sum of $556,862.22 for advances theretofore made by him to said Company, and in the sum of $64,672 for dividends previously declared by said Company on the shares of stock above described. Said indebtedness was an open unsecured book account. No security, bond nor note has been given therefor. It was entered upon the books of the corporation in South Carolina; and was also entered upon a complete set of personal books kept by Mr. Beidler in Chicago.

The main question presented by this appeal is whether or not the State of South Carolina could and did properly tax this debt, as property within the State

of South Carolina, as it was held to be by the Supreme Court of South Carolina; or whether on the other hand it is property situate beyond the bounds of the State of South Carolina and not taxable therein.

An inheritance tax approximating 14 per cent of $621,534, or about $68,000 has been levied on this debt by the State of South Carolina; (the "lower brackets" in the calculating being taken up in paying the tax on the stock in the Santee Company owned by Mr. Beidler).

The Statute.

Prior to Mr. Beidler's death the pertinent portion of the South Carolina Inheritance Tax Act read as follows:

> "SECTION 1. A tax shall be, and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, for the support of the State Government in the following cases:
>
> "(*a*) When the transfer is by will or by the intestate laws of this State from any person dying, seized or possessed of the property while a resident of the State.
>
> "(*b*) When the transfer is by will or intestate laws of property within the State, and the decedent was a non-resident of the State at the time of his death."

Shortly after Mr. Beidler's death Section One of said Inheritance Tax Act was amended to read as fol-

lows, the words italicized being added to the Act by amendment:

> "SECTION 1. A tax shall be, and is hereby, imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, *and such transfer shall be held and construed to include all debts and all obligations, secured and unsecured, owed by any resident, citizen, person or corporation of this State to any non-resident; and all property and the rights of any nature whatsoever over which this State has jurisdiction to enforce the payment of the tax,* to persons, institutions or corporations, not hereinafter exempted, for the support of the State Government in the following cases:"

ARGUMENT.

We submit that the pivotal question should be and is the *character of the debt* in question.

The debt herein, as appears by the agreed statement of facts, is "an open unsecured book account." There is no complication herein of a note or bond evidencing the debt, or of a mortgage or deed of trust securing it, which might be taxed where found. If the entry in a book localized the debt anywhere, it was the entry in Mr. Beidler's books in Chicago, for the simple reason that if an action has to be brought upon a book account, the production of the creditors books out a prima facie case. The Supreme Court of South Carolina did not claim to the contrary herein. The advances were made from and were under the law to be

repaid in Chicago (6 R. C. L., 902, Sec. 287; Weyland *v.* Park Terrace Co., 202 N. Y., 231; Ann Cas., 1912-D, 1010).

Hence, we submit that the pivotal question is, where is the real situs of such a debt; and that a substantial answer to this question is found in the maxim "*mobilia sequuntur personam,*" and that thereunder the situs of the debt in question was at the time of Mr. Beidler's death in Chicago, and not in South Carolina.

Some courts have criticized and doubted the binding force and effect ofthe maxim "*mobilia sequuntur personam.*" This Court in its decision in Blackstone *v.* Miller, 188 U. S., 189, (hereinafter fully discussed and which was relied upon in the decision below), treated the maxim in question as inconclusive, yielding and unsubstantial. The Supreme Court of South Carolina herein practically ignored the maxim and held that the debt herein (p. 109) had "*an established local situs at the domicile of the debtor.*"

The decision of the Supreme Court of South Carolina was, however, rendered without the benefit of, and before the handing down of the latest decision of this Court upon the general subject involved, to-wit, the decision of this Court in—

Blodgett v. Silberman.

We submit that the basic doctrine of Blodgett *v.* Silberman, viz, the binding force and effect of the maxim "*mobilia sequuntur personam*" is at variance with the decision of the Supreme Court of South Carolina herein. In the Blodgett case, in determining

whether an interest owned by the decedent in a New York partnership, which the Court held amounted to " a debt owing to him, a chose in action, an intangible," was taxable in Connecticut, the decedent's domicile, this Court held:

> "The power of the state of a man's domicile to impose a tax upon the succession to, or the transfer of, his intangible property, even when the evidences of such property are outside of the state at the time of his death, has been constantly asserted by the legislatures of the various states. * * *
>
> "At common law the maxim *'mobilia sequuntur personam'* applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, *that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.* (Italics added.)

This holding is absolutely in line with the former but very brief holding of this court in Rhode Island Hospital Trust Company *v.* Doughton, *supra*:

> "In the matter of intangibles, like choses in action, shares of stock and bonds, *the situs of which is with the owner,* a transfer tax of

course may be properly levied in the State in which he resides."

In the Blodgett case this Court further held that bonds and certificates of indebtedness of the United States, owned by the Connecticut decedent, but physically held in New York State were in fact *debts due* the Connecticut decedent, and that hence under the operation of the maxim "*mobilia sequuntur personam*" their situs, as debts, was in Connecticut and that they were there taxable. This Court further held that a Savings Bank account in New York and a life insurance policy payable to the Estate were both *debts* due to the decedent or his estate in Connecticut and hence were taxable there.

The whole spirit of the Blodgett decision, we submit, to use a phrase employed therein, is that anything "*having as its essence an indebtedness* or a chose in action," has its substantial and primary situs, *and the only situs which arises out of its inherent nature as a debt at the domicile of the creditor*, and hence is there taxable.

While authoritatively reaffirming the controlling effect of the maxim "*mobilia sequuntur personam*," this Court in the Blodgett case, fully recognized the existence of the myriad of the decisions to the effect that bonds, promissory notes, bank accounts, etc., physically held in states other than that of the decedent's domicile may also be there taxed on account of their nature and value as promissory notes, bonds, bank accounts, etc., said the court:

> "Further, this principle is not to be shaken by the inquiry into the question whether the transfer of such intangibles, like specialties, bonds or promissory notes, is subject to taxation in another jurisdiction."

The rationale of the many decisions holding that in addition to the existence of the taxable situs of a debt itself, always at the domicile of the creditor, and never *ipso facto* at the domicile of the debtor, is that the note or bond or mortgage or specialty physically held in a State other than the State of the domicile of its owner, constitutes property of value and property of "concrete tangible form," in itself, in the State where it is physically held (Wheeler *v.* N. Y., 233 U. S., 439). A potent reason frequently assigned for allowing the taxing of a promissory note or bond or other evidence of indebtedness in the state in which it is physically found, is that the executors must get physical possession of such evidence of indebtedness before they could collect the debt evidenced or secured thereby. No such reason or necessity exists in the Beidler case. Suit could be brought and the debt fully proven by the production only of Mr. Beidler's books in Chicago and of the canceled checks which exist in Chicago for the money advanced and by parole evidence that the dividend had been declared. No book or paper in South Carolina is necessary to that end.

To the same general effect are the decisions holding that a bank account owned by a decedent in a State other than his domicile is taxable in the State where the bank is situated. In these decisions it was held, although the technical relation in the case of a bank

deposit of debtor and creditors exists, that in a broader sense a bank deposit is the same as if the depositor had actually left a sum of money in the vault of the bank which he can go and get whenever he desires it. In other words, in these decisions a bank deposit is treated the same as cash actually left in the state in which the bank is situated. See *in re*, Gibbs, N. Y. Supp. 53; *in re* Houdayer, 150 N. Y., 37; 34 L. R. A., 235; 55 A. S. R., 642; McLaughlin *v.* Cluff, 240 Pac., 161, and note to 46 L. R. A. (N. S.), 1175.

This Court also in the Blodgett case by referring to the Multnomah County case, 169 U. S., 421, and the Stempel case, 175 U. S., 309, recognizes the fact that by habitually keeping a fund of money in a state other than that of the owner's domicile and by using it as a "revolving loan fund" that it might acquire a business situs that would make it taxable in the State in which it is used.

We submit that the true rule to be gathered from all of the decisions, as clarified and fortified by the reaffirmation by this Court in the Blodgett case of the controlling effect of the maxim "*mobilia sequuntur personam*" is that the true and substantial and only taxable situs of a debt arises out of "its essence," its character as a debt is at the domicile of the creditor and never at the domicile of the debtor; and that the only cases in which, considering the nature of the debt in the light of the Blodgett case, a debt can be taxed elsewhere are cases in which its evidence or its security is physically there as a thing of value held in some other State than the domicile of the debtor or where it,

as a bank account or a revolving loan fund, is considered as money actually existing in the other State.

The great industry of counsel for the State and our own research, has revealed but one decision in the whole country which seems to attempt to hold that an open account debt is taxable at the domicile of the debtor through its nature and character, viz., *In re* Graff, 128 Minn., 371. We specifically call the attention of the Court hereinafter to the fact that the Supreme Court of Minnesota has subsequently practically overruled the Graff case, and has absolutely shaken its authority. See State *v.* Chadwick, 133 Minn., 117; 157 N. W., 1076; 158 N. W., 637; L. R. A. 1916 E, 1288. The Graff decision is certainly contrary to the doctrine of the Blodgett case.

Blackstone v. Miller, 188 U. S., 189.

The Supreme Court of South Carolina, however, based its decision herein upon its application of the facts involved in the Beidler case, to the decision of this Court in Blackstone *v.* Miller. Hence, we ask to be allowed fully to discuss this important decision and to present the many authoritative interpretations of its doctrine as indulged in both by this Court and by numerous State supreme courts, which have followed and enforced the Blackstone decision as they have understood it. The facts in the Blackstone case were that the testator died domiciled in Illinois. He had $4,000,000 on deposit in New York, and a citizen of New York owed him a debt of comparatively insignificant size, $10,000. The question was whether this property was taxable under the inheritance tax Statute of New York State.

In the Blackstone case there was no suggestion that the debt or deposit could be collected, assuming resistance on the part of the debtor, in any other State than New York.

This Court, passing upon the case that it had before it, held that there was a taxable situs in New York if her laws were necessarily involved in transferring the title of the debt from the dead to the living, and that because it was the laws of New York alone, which breathed vitality into the debt in question, *by furnishing power to make the debtor pay,* that necessarily the laws of New York were involved and that the tax was proper.

We submit, however, that the Blackstone case does not control the Beidler case, for two all sufficient reasons,

(*a*) It may be the intention of this Court, as intimated in the Blodgett decision, to review and modify all decisions, holding that intangibles may have a taxable situs in other States than the domicile of their owner, and

(*b*) That the doctrine of the Blackstone decision is fully applicable only to cases in which the laws of the State of the domicile of the debtor *alone* could force the debtor to pay. But there have arisen since that decision was rendered numerous cases in which it is possible, through facts actually existing at the date of the death of the decedent, for the creditor's executor to collect the debt in *one or more other States* than that of the domicile of the debtor. In these cases no tax has been allowed in the debtors' State, because no certainty exists that her laws alone could make the debtor pay. We present these cases hereinafter and present indisputable facts showing that the debt involved in the Beidler case could be collected in case of resistance in any one of six States other than South Carolina.

These positions in their order.

Has the Blodgett Decision Affected the Blackstone Decision?

In the Blackstone case, we submit that the maxim "*mobilia sequuntur personam*" is treated as being but a yielding fiction and not a settled rule of the situs of intangible property.

Said the court in the Blackstone case:

> "It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction which gives whatever meaning it has to the saying maxim '*mobilia sequuntur personam.*' But being fiction it is not allowed to obscure the facts when the facts become important."

Again the court said:

> "The maxim '*mobilia sequuntur personam*' has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historic tradition the fiction must give way."

In a quotation relied on by the South Carolina Supreme Court it was announced as to the effect of an inheritance tax statute, "Thus the legislature intended to repeal the maxim '*mobilia sequuntur personam*' so far as it was an obstacle."

We submit that the maxim receives very different treatment in the Blodgett case, in which it is stated as

a fixed and settled rule of the situs of intangible property. Said the court:

> "At common law the maxim '*mobilia sequuntur personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, *that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.*" (Italics added.)

We submit that the character of the intangible property in question should be the controlling element. That in the Beidler case inasmuch as under the maxim which is now recognized as a fixed and settled rule, whatever "is in its essence an indebtedness" has its situs at the domicile of the creditor; hence that the indebtedness of the Santee Company to Mr. Beidler has its situs in Illinois, and not in South Carolina; that as there is no bond or security, deed or mortgage, or any such paper in South Carolina which can be treated as having a value of its own, that there is nothing in South Carolina to be taxed.

If, however, there be no conflict between the Blodgett decision and the Blackstone decision, we submit, under the Blackstone decision as it is unanimously interpreted by many courts, that the Supreme Court of South Carolina has erred in assessing a tax upon the debt due the Beidler Estate by the Santee Company and in holding that said debt constituted property within the State of South Carolina. This brings us to a consideration of—

The Rationale of the Blackstone Decision as Applied to the Facts of the Beidler Case.

In the Blackstone case, it will be recalled that there were no facts in the record even to suggest that the debt or deposit could possibly, in case of resistance by the debtor, be collected and the debtor "made to pay" in any State other than New York.

In the Beidler case, under the facts in the record, it would have been possible, in case of resistance, to collect this debt in any one of six States other than South Carolina.

The Beidler Estate herein has shown by indubitable testimony which was not gainsaid or contradicted by the South Carolina Tax Commission, that the Brooklyn Cooperage Company at the time of Mr. Beidler's death owed to the Santee Company for timber sold to it vastly more money than the Santee Company owed to the Beidler Estate. It was further shown by affirmative testimony, which is in the record, that the payment of this debt by the Brooklyn Cooperage Company was absolutely guaranteed by the American Sugar Refining Company. It was further affirmatively shown that both of these companies are amply solvent and that each of them have unencumbered property, worth vastly more than the debt of the Brooklyn Cooperage Company to the Santee Company, situate in each of the following states, to-wit: Massachusetts, New York, Pennsylvania, and Maryland.

It was further shown by the Beidler Estate, all of which appears in the record herein, that under the laws of each of these four states, and also under the laws of Arkansas and Missouri where the Brooklyn Cooperage Company and the American Sugar Company do business, that the Beidler Estate either by having ancillary administration taken out in said states or by transferring the debt to an assignee, or by direct suit in New York or Arkansas where, by statutes, a foreign executor may sue, could, by attachment or garnishment of the debt due by the Brooklyn Cooperage Company and guaranteed by the Refining Company to the Santee Company, collect said debt by legal proceedings in any of said states should the Santee Company resist payment. In other words, it was amply shown in the record and not contradicted, that if resistance should be assumed that the Beidler Estate could collect its debt from the Santee Company without ever entering the State of South Carolina, and without taking out letters of ancillary administration therein for the purpose of completing the devolution of the debt from the dead to the living or reducing it to hand. The burden of showing to the contrary was a burden on the Tax Commission of South Carolina. They offered no evidence but tacitly accepted the facts as proven herein and as set out in the present record by the Beidler Estate to the contrary.

In response to this absolute showing that the Beidler Estate need never enter the State of South Carolina to avail itself of the debt due by the Santee Company,

the South Carolina Supreme Court held herein as its interpretation of the Blackstone decision and of the decisions construing it, that in order to avoid the payment of an inheritance tax in South Carolina it must appear that the Beidler Estate not only could collect its debt against the Santee Company by attaching the debt due to it by the Brooklyn Cooperage Company in some State other than South Carolina, but also that it must appear that the Beidler Estate *could secure personal jurisdiction of the debtor,* the Santee Company, in some other State than South Carolina.

We submit that this is not the true interpretation of the Blackstone case as appears both from its own language and from the universal interpretation that has been placed upon it by other courts.

Passing then to the Blackstone decision, we quote the language of the Court, as follows:

> "If the transfer of the deposit *necessarily depends upon and involves the law of New York for its exercise,* or, in other words, *if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax.* United States *v.* Perkins, 163 U. S., 625, 628, 629; McCulloch *v.* Maryland, 4 Wheat., 316, 429. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, *but because of the practical fact of its power over the person of the debtor.* The principle has been recognized by this court with regard to garnishments of a domestic debtor of an absent defendant. Chicago, Rock Island & Pacific Ry. Co. *v.* Sturm,

174 U. S., 710. See Wyman *v.* Halstead, 109 U. S., 654. *What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay.* It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona,* and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

"Power over the person of the *debtor confers jurisdiction,* we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a State conflict with a fiction due to historical tradition, the fiction must give way." (Italics added.)

It is to be noted the tax is held to be proper in the Blackstone case, because the laws of New York are necessarily involved in transferring the debt therein from the decedent to his beneficiary, because it is the law of New York alone which *gives the debt vitality* by making the debtor pay. Beyond the language quoted, the court further, and as an illustration, supposed the possibility of a moratium being declared in New York State and remarked that in such a case "*the right of the foreign debtor would be gone.*"

In other words, the fact that the laws of New York State *alone* could make the debtor pay, was the fact that conferred the taxable situs.

Since the Blackstone case was decided, however, numerous cases have arisen in which it appeared that the debt could be collected in one or more States other than the State of the creditor's domicile. In each of these cases the right to the tax was denied. These decisions are by most eminent courts, and we feel sure that their reasoning will be at least persuasive.

In examining these authorities, we also ask to point out the fact that they do not bear out the assertion made by the Supreme Court of South Carolina, that they are based on ability to secure personal jurisdiction of the debtor. They are based, we submit, on ability *to collect the debt.*

New York.

In re Gordon, 186 N. Y., 471; 79 N. E., 722; 10 L. R. A. (N. S.), 1089.

This decision is far-reaching and, we submit, fully establishes the position herein invoked. The decedent was a resident of New Jersey. His life was insured in tax upon the policy of insurance. Obviously a most vital question was thereby presented to the Court of Appeals of New York, for if an inheritance tax could one of the great Metropolitan Life Insurance Companies of New York City which was incorporated under the laws of the State of New York and which had its principal business therein. The authorities of the State of New York attempted to collect an inheritance be collected in the Gordon case, the inheritance taxes could be collected upon life insurance policies of all of the citizens of the United States, wherever domiciled, whose lives are insured in New York companies. The Court of Appeals of New York State had decided the Blackstone case in 1902 and it had been affirmed by the United States Supreme Court in 1903. The Gordon case was decided in 1906, with both its former decision

and the decision of this Court in the Blackstone case, therefore prominently before the Court of Appeals of New York State, which rendered the following decision upon the important question of the collectibility of an inheritance tax upon the insurance policy in question:

> "The question presented is whether a claim under a certain policy of life insurance issued by a New York corporation to and upon the life of a resident of New Jersey is properly subject to a transfer tax in this State, within Subdivision 2 of Sec. 220 of the transfer tax law of 1896 (Laws 1896, chap. 908, p. 868), which imposes a tax 'when the transfer is by will or intestate law of property within the State, and the decedent was a non-resident of the State at the time of his death.' The learned appellate division reversed the decision of the surrogate, and held that it was not property so taxable, and we concur in this view. * * * It is, however, urged that principles which might otherwise be regarded as fixing the *situs* of this debt at the place of domicile of the owner and holder constitute more or less of an historical fiction, which at times must yield to more practical and important considerations; *that where a creditor must go to the domicile of his debtor, and rely upon the laws and tribunals of that jurisdiction for enforcement of his claim, the latter should be regarded as having its situs there;* that the claim here involved comes within this rule, and must be regarded as property taxable in New York, because there the debtor insurance company was organized and has its principal place of business and thither must go to the policyholder for collection of his claim. And in sup-

port of this contention the learned counsel cites the cases of Blackstone *v.* Miller, 188 U. S., 189; 47 L. Ed., 439; 23 Sup. Ct. Rep. 277, *in re:* Houdayer, 150 N. Y., 37; 34 L. R. A., 235; 55 Am. St. Rep., 642; 44 N. E., 718; and *in re:* Clinch, 180 N. Y., 300; 73 N. E., 35, which, it is claimed, have applied the principles invoked and upheld taxation in New York upon facts not to be differentiated from those presented here. We cannot, however, agree with him that these otherwise controlling decisions are predicated upon facts which fully square with those arising in this proceeding, *for the creditor in each one of them, unlike the respondents here, was really under the necessity of going to the domicile of his debtor in New York for protection and collection of his claim. Thus the essential fact was present which alone permitted the application of the principles referred to,* and whatever was then said apparently supporting appellant's position must be interpreted in the light of that circumstance.

"The Blackstone case involved the question of the right of the State of New York to impose a tax upon the transfer of an ordinary indebtedness due from a citizen of that State to a non-resident, and also of a deposit made by such non-resident in the State. There is no discussion of the right with reference to the ordinary indebtedness, but the entire opinion is devoted to a consideration of the power to impose a tax with respect to the deposit. This Court had fully affirmed the right to impose a tax upon the transfer of a deposit made within the State, upon the ground that it was the equivalent of actual money, and therefore clearly property

within the State. It had affirmed in that particular proceeding the imposition of a tax upon that ground, and this was all that it was necessary to consider. The Supreme Court of the United States, in the opinion delivered by Judge Holmes, however, deemed it wise to go beyond this ground, and hold that a tax could be sustained even upon the theory that the deposit was an ordinary debt. *But this holding was unequivocally based upon the conditions disclosed in that case, which were that the debtor resided within the State, and that the creditor must come there and take advantage of the laws of the State for the purpose of enforcing his claim.*" (Italics added.)

It is specifically to be observed that there is no reference herein to the fact that personal jurisdiction of the Insurance Company could be obtained in New Jersey, but the decision is squarely bottomed upon the fact that *collection of* the insurance policy could be effected in New Jersey.

Massachusetts.

Bliss v. Bliss, 221 *Mass.*, 201; 109 *N. E.*, 148; *L. R. A.* 1916-*A*, 889.

Bliss, Fabyan and Company, a partnership, owed Cornelius N. Bliss certain promissory notes. The partnership had its principal office in Boston, where one partner lived, but also maintained separate offices in New York and Chicago, in each of which cities members of the partnership resided. The notes were executed in Boston, where the main office of the firm

was, were made payable in Boston, and after the death of Mr. Cornelius Bliss, were actually paid to his executor by check sent out of the Boston office.

The State of Massachusetts levied an inheritance tax, which was held invalid by the Supreme Court of the State for the following reasons, which are quite pertinent to the present case:

> "The maker of these notes was a partnership. It had a place of business, ample assets to meet the obligations, and a resident partner within the State of New York, and upon whom legal service could be made, *binding upon enough property of the partnership, to secure the payment of the notes.* There was no occasion for the creditor to resort to our courts to give validity to the notes. *The creditor did not, and did not need to, depend upon our law for the collection of his debt.* The circumstances that for some purposes the office of the partnership in Boston was treated as its principal home office, has no decisive effect. *It was not the place to which the creditor was required* to come to collect his debt. Nor does the fact that the notes were made in Boston and were payable there necessarily give them a *situs* for taxation purposes, in Massachusetts. *State Tax on Foreign-Held Bonds,* 15 *Wall.,* 300. The mere accident that for other reasons the executors of the Will of the owner of these notes resort to our courts does not, of itself, confer jurisdiction to impose a succession tax on these notes. The doctrine of *Blackstone v. Miller,* 188 U. S., 189, does not reach to a case like the present * * * *The law of Massachusetts does not need to be invoked in any respect.* The sanction of the law

of New York alone gives completion to the succession from its beginning to its end. Hence, without considering other aspects of this contention, there is no sound foundation for any succession tax in this Commonwealth." (Italics added.)

The Massachusetts Court, pursuing the same general train of thought, then held that a number of registered bonds of the State of Massachusetts, although held by Mr. Bliss physically at his domicile out of the State, were taxable because they being registered must of necessity be brought to Massachusetts for transfer.

Upon the question of any necessity to secure personal jurisdiction of the debtor, we especially call attention to the statement of the Massachusetts Court that there could be no tax in Massachusetts because "legal service could be made" in New York, "*binding upon enough property of the partnership to secure the payment of the notes.*" There was no thought with the court of *personal jurisdiction;* the idea was the practical one—that the debt could be collected in New York State, hence no resort to the Massachusetts courts was necessary.

Minnesota.

As has hereinbefore been noted, the Supreme Court of Minnesota *In re* Graff, 128 Minn., 371, had in February, 1915, held a debt to be taxable in Minnesota, which was the domicile of the debtor. This is the case relied on by the South Carolina Tax Commission. We, however, especially call the attention of the court to the decision of the same court handed

down in May, 1916, entitled State *v.* Chadwick, 133 Minn., 117; 157 N. W., 1079; 158 N. W., 637; L. R. A. 1916-E, 1288.

This decision of the Supreme Court of Minnesota explains and practically overrules the Graff case and quite learnedly discusses the Blackstone decision.

In the Chadwick case the facts are that the decedent, a resident of Chicago, owned bonds of the Great Northern Railway Company. The Railroad was a corporation under the laws of Minnesota but with offices in New York, Wisconsin, South Dakota, North Dakota, Montana, Idaho and Washington. The frequent use, in the Chadwick case, of the word "jurisdiction" may be explained by the fact that the Inheritance Tax Law of Minnesota in describing the property to be taxed provided for a tax of all property owned by the decedent within the State of Minnesota, "and within its jurisdiction." Said the Supreme Court of Minnesota in the Chadwick case:

> "In *State* (Graff) *v. Probate Court of St. Louis County*, 128 Minn., 371; 150 N. W., 1094, L. R. A., 1916-A, 901, the right to impose a succession tax received exhaustive consideration. It was held that a *promissory note* made by a Minnesota corporation, *not appearing to be subject to jurisdiction out of the State*, to a resident of Pennsylvania, was upon his death subject to a succession tax in Minnesota. We start, then, with the law settled that a promissory note made by a corporation of this State, *not subject to jurisdiction elsewhere*, is subject to a succession tax in this State, though the owner is a nonresident. The appellants seek to distinguish the case at bar from the one cited because it in-

volves a corporate bond instead of a promissory note, because the bond is registered at the office of the corporation maker in New York, and because the corporation is subject to jurisdiction in States other than Minnesota. *We discuss only the distinction last mentioned.*

"Jurisdiction of the railway company can be had outside of Minnesota in each of the seven States through which its lines pass, and in which it is authorized to do business, and in New York where it has an office. Because of this the appellants urge that there is no situs in Minnesota upon which to base jurisdiction to lay a succession tax. *That it is necessary for the non-resident creditor of a resident debtor to come into the State and invoke its laws and use its courts to enforce his obligation is a fact of importance in the determination of the right of the State to impose a succession tax;* and indeed where the security holder is a non-resident and the security is not physically within the State *it is the one essential fact consciously or unconsciously accepted in the cases where a succession tax is sustained as vital to jurisdiction. This is the thought in Blackstone v. Miller,* 188 U. S., 189; 23 Sup. Ct. 277; 47 L. Ed., 439, affirming a decree of the surrogate's Court which was affirmed in 69 App. Div., 127; 74 N. Y. Supp., 508, and 171 N. Y., 682; 64 N. E., 118, where the Court says:

" 'If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. * * * But it is plain that the

transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. * * * What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. * * * So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. * * * Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizen than upon tangible chattels found within the State at the time of the death.'

"In the case before us there is no necessity of the owner coming to Minnesota to enforce the bonds. They can be enforced in New York or in any of the seven States through which the road passes. Under the Constitution a judgment upon the bonds rendered in any of these States will be entitled to full faith and credit in Minnesota. Const. U. S., Art. 4, Sec. 1. And the trust deed securing the bonds can be enforced in any of the seven States and all the lines in the several states, constituting as they do one system, can be sold and title passed under the foreclosure decree. *Muller v. Dows*, 94 U. S., 444; 24 L. Ed., 207. *Union Trust Co. v. Olmsted*, 102 N. Y., 729; 7 N. E., 822. *Craft v. Indiana, etc. R. Co.*, 166 Ill., 580; 46 N. E., 1132. *Georgia S. R. Co. v. Mercantile Trust Co.*, 94 Ga., 306; 21 S. E. 701; 32 L. R. A., 208; 47 Am. St. Rep., 153.

International Bridge Co. v. Holland Trust Co., 81 Fed., 422; 26 C. C. A. 469. *Central Trust Co. v. Wabash, etc., R. C.* (*C. C.*), 29 Fed., 618. In *Bliss v. Bliss*, 221 Mass., 201; 109 N. E., 148, L. R. A.., 1916-A, 889, the facts were these: The copartnership of Bliss, Babyan & Co. consisted of five members, two residing in New York, two in Massachusetts, and one in Chicago. It did business in New York, Boston and Chicago. It executed notes to Cornelius N. Bliss, one of the copartners. They were made and were payable in Boston where the copartnership had its principal office. Cornelius N. Bliss was domiciled in New York and the notes were in his possession there at the time of his death and there was property there sufficient to pay them. Upon these notes it was sought to impose a succession tax in Massachusetts. *It was held that they were not subject to such tax and the holding was put definitely upon the ground that it was not necessary to invoke the laws or seek the tribunals of Massachusetts to enforce them.* The court said:

" '*There was no occasion for the creditor to resort to our courts to give validity to the notes. The creditor did not and did not need to depend upon our law for the collection of his debt.* * * * The doctrine of *Blackstone v. Miller*, 188 U. S., 189 (23 Sup. Ct. 277; 47 L. Ed., 439), does not reach to a case like the present. The tax sought to be collected is a succession tax. It is apparent that the succession of these notes or their proceeds does not depend under the circumstances here disclosed in any degree upon the moral or legal support of actual assistance of our laws. * * * The law of Massachusetts does not need to be invoked in any respect.

The sanction of the law of New York alone gives completion to the succession from its beginning to its end.'

"A like conclusion was reached in *Matter of Gordon,* 186 N. Y., 471; 79 N. E., 722; 10 L. R. A. (N. S.), 1089. There it was sought to impose a transfer tax upon the proceeds of an insurance policy issued by a corporation of New York to a resident of New Jersey who died there. The policy was payable in New York and was kept by the insured in New Jersey. By the laws of New Jersey the insurance company was subject to jurisdiction there. Reliance was again placed on *Blackstone v. Miller,* 188 U. S., 189; 23 Sup. Ct., 277; 47 L. Ed., 439, in support of the tax, and in referring to it the court said:

" 'That the holding was unequivocally based upon the conditions disclosed in that case, which were that the debtor resided within the state and that *the creditor must come there and take advantage of the laws of the State for the purpose of enforcing his claim.*'

"It differentiated the facts before it from the facts in the *Blackstone case* because the insurance company could be subjected to jurisdiction in New Jersey as well as in the state of its creation, while in the *Blackstone case* jurisdiction would be acquired of the corporation debtor only in the State under the laws of which it was organized; and it held, because of this distinction, that the proceeds of the policy were not subject to a transfer tax in New York. The *Massachusetts case* and the *New York case* cite a number of authorities, unnecessary to be considered here, supporting the conclusion which they reach. The principle of these two cases is determinate in favor of the contention of the

> appellants, and applying it we hold that the bonds *are not subject to a succession tax in Minnesota because the debtor is incorporated there and has there its principal offices, it being subject to jurisdiction in other states having* property sufficient to satisfy them." (Italics added.)

It is upon a single sentence contained in the Chadwick decision which is quoted by the Supreme Court of South Carolina in its decision in the Beidler case, that the Supreme Court of South Carolina bases its whole contention that the gist of the line of decisions now under consideration is that, for the tax to be avoided in South Carolina, it must appear that *personal jurisdiction* of the debtor can be secured in some State other than South Carolina. We submit that this was not the meaning of the Supreme Court of Minnesota in the Chadwick case. The whole reference to personal jurisdiction in the Chadwick case reads as follows:

> "From what is said it is not to be understood that we hold that the *accidental fact* that a debtor is found out of the State of his domicil, and is subject to jurisdiction there, relieves his obligation in the hands of a non-resident owner from a succession tax to which otherwise it would be subject. What we have said is in view of the facts before us showing personal jurisdiction of the corporate debtor in other states in which it is authorized to do business." (Italics added.)

We submit that manifestly the meaning of the Supreme Court of Minnesota is that the collection of a tax would not be avoided by *"the accidental fact" that after the death of a creditor* the debtor might go into another State and possibly voluntarily and collusively allow jurisdiction to be obtained of him there, but that the rule is that the status of the parties and of the debt at the moment of the creditor's death governs, and that the same cannot be controlled by the accidental comings and goings of the debtor thereafter. Hence, the Beidler case could not be controlled, by any such fact as occurred in the Bliss case, viz: the payment by the Santee Company to Beidler's executors after his death of the debt, or their voluntarily subjecting themselves to the jurisdiction of some other State than South Carolina; but in the Beidler case the controlling consideration is that at the moment of the death of Mr. Beidler, a situation existed which would give the Beidler Estate the full right to collect the debt in question by resorting to attachment in the Courts of any one of six States referred to in the Transcript.

That this is the basis and meaning of the Supreme Court of Minnesota is made perfectly clear by all the language italicized in the foregoing quotation and by its unequivocal statement—

> "That it is necessary for the non-resident creditor of a resident debtor to come into the State and invoke its laws and use its courts *to enforce his obligation* * * * *is the one essential fact consciously or unconsciously ac-*

cepted, in the cases where a sucession is sustained, as vital to jurisdiction."

South Carolina.

In 1924, and one month before Mr. Beidler died, the Supreme Court of South Carolina decided the case of Fuller *v.* South Carolina Tax Commission, 128 S. C., 14; 121 S. E., 478. The facts therein were that the decedent owned bonds, held in New York but secured by a mortgage of the physical properties of a railroad which lay partially in North Carolina and partially in South Carolina. The railroad was a South Carolina corporation. The court carefully reviewed all of the authorities, especially the Blackstone case. It held that there could be no tax in South Carolina unless the laws of South Carolina and her courts must be invoked to complete the descent of the property from decedent to his heirs. This was the South Carolina court's construction of the Blackstone case. Said the court:

> "May ancillary administartion be compelled in the latter State (the domicile of the debtor) or may resort in some form to the laws of the latter State be necessary to secure recognition and confirmation of the title transferred by the intestate or succession laws of the State of the domicile in order to complete the transfer in fact and *make effectual the disposition of the property authorized by the law of the domicile?* If so, we think, there is such a transfer of a non-resident decedent's "*property within the State,*" seeking to impose the tax as may properly be taxed consistently with the theory of inheritance taxation."

The Court then proceeded to hold that there could be no inheritance tax in South Carolina because—

> "In the contingency that it should be necessary for the trustee to foreclose the mortgage for the benefit of the bondholders, since the line of railway mortgaged lies in two states, resort could be had to the Courts of North Carolina to foreclose the mortgage and sell the line of railway as a whole. Miller *v.* Dows, 94 U. S., 444; 24 L. Ed., 207; Riverside Mills *v.* Alabama & Georgia Mfg. Co. 198 U. S., 197; 25 Sup. Ct., 629; 49 L. Ed., 1016. While the efficacy of such a judgment would finally depend upon the laws of this State, in that it could ultimately be enforced only through the Courts of this State, still the judgment would be entitled to enforcement under the full faith and credit clause of the Federal Constitution, and it would seem clear that the executors of or legatees under the will here involved could not be deprived of their beneficial interest in such judgment, by failure to resort to ancillary administration proceedings in South Carolina to establish here the title to the securities transferred by the succession laws of New York. State *v.* Chadwick (Re Ward) 133 Minn., 117; 157 N. W. 1076; 158 N. W. 637; L. R. A. 1916 E, 1288. In any view therefore we can see no valid ground upon which to rest a conclusion that the effectual transfer of these particular securities in accordance with the disposition of the testator's will could be made to depend upon the laws of South Carolina."

It will be seen that in its decision in the Miller case the Supreme Court of South Carolina did not hold that

securing personal jurisdiction of the railroad was necessary. The whole point was that by resort to the courts of North Carolina the executor could collect the amount of the bonds. He need not invoke the laws and processes of South Carolina to collect the money; hence there could be no tax.

Ruling Case Law.

In the Article on Inheritance Taxes in 26 R. C. L., at page 215, under the title "Debts owed by Residents," the author, in considering this question, says:

> "The right to tax in cases of this character is based not upon the domicile of the debtor, but *upon the necessity of resorting to the Courts of the State to enforce the debt,* and when there is *no such necessity,* there can be no tax."

United States Supreme Court.

There is but one reference, so far as we are advised, in the later decisions of this Court to the general question herein involved as covered by the Blackstone decision. This reference is contained in the concurring opinion by Justice McKenna in Wheeler *v.* New York, 233 U. S., at page 446. In the Wheeler case the decedent was a resident of Connecticut. Certain promissory notes of great value owned by him were kept in a safety deposit box in New York City. Ancillary administration of the decedent's estate had been taken out in New York. In discussing the nature of the inheritance taxation as applied to the facts of the case before the court, and with specific reference to the Blackstone case, Justice McKenna said:

> "The tax under review is of that kind. In other words, it is not a tax on property, but a tax upon the transfer of the property by the will of the testator of plaintiffs in error *as provided by the laws of the State.* The will was probated in Connecticut, where the deceased was a resident, but ancillary letters of administra-

tion were issued to plaintiffs in error by the Surrogate's Court, County of New York, State of New York, and the taxed notes were part of the property disposed of by his will. *It appears, therefore, that the property is in the control of the courts of New York. In other words, the laws of New York are invoked, accomplish its transfer and subject it to the dispositions of the will and make effectual the purposes of the testator. Blackstone v. Miller, supra.*" (Italics added.)

Summary as to Doctrine of Blackstone Case.

We submit that the Blackstone case rules only the case of a debt due by a debtor who can be made to pay *only* by the laws and courts of his own State. We submit further that in order to sustain the tax the debtor's State has the burden on it of showing, with certainty, that the debt may not be collected elsewhere.

We submit further that the doctrine invoked by the Supreme Court of South Carolina, that it must appear that personal jurisdiction of the debtor, in other States, is necessary is an innovation of no merit. There may be cases in which personal jurisdiction is necessary to assist in collecting the debt; but collecting the debt alone is the essential factor.

Beidler Case Not Within the Spirit of the Blackstone Case.

We submit that the whole theory of inheritance tax legislation is that the State is entitled to a tax if the devolution of a decedent's estate from the dead to the living heir is reasonably referable to her laws. The

State of the domicile is always entitled to a tax, because her laws determine the succession or prove and recognize the will. But no other State is in so favorable a situation. If any other State is to levy a tax she must show that, in case of resistance, the creditor must use her laws and her courts.

Then, we submit, there is another vital step as applied to the Beidler case. There should be some reasonable possibility that the creditor will resist making payment. In the Blackstone case the chance that there might be resistance was present, *but in the Beidler case there is absolutely no chance of resistance,* for the simple reason that Mr. Beidler owned a controlling interest in the company and his executors are now in absolute control of the company, and Mr. Beidler's heirs own the balance of the stock.

Hence, we submit that, under the undisputed facts, there can be no human possibility of the laws or courts of South Carolina exercising any coercive power over the Santee Company or performing any service in transferring this property from the dead to the living heir. Hence, we sumit, that the Beidler case stands upon a basis different to any other case that has ever been submitted to the courts. It should be exempt from double taxation for this distinguishing reason as well as all others.

Other Points in the Decision of the Beidler Case by the Supreme Court of South Carolina.

In addition to attempting to differentiate the Blackstone decision and its own Fuller decision from the Beidler case by ignoring the maxim "*mobilia sequun-*

tur personam'' and by holding that because the courts of South Carolina alone can obtain personal jurisdiction over the Santee Company that the tax is proper whether actual necessity to sue in South Carolina exists or not, the Supreme Court of South Carolina further held that the indebtedness in question was property in South Carolina and hence taxable therein for two additional reasons—

(1) That South Carolina has jurisdiction of the debt for purposes of administration, and,

(2) Because, under certain South Carolina decisions, it had been held that a domiciliary executor of a sister State has no title to a debt due to the estate of a decedent of another State by a resident of South Carolina.

These in order:

The Question of Jurisdiction for Purposes of Administration.

The Supreme Court of South Carolina seized upon the expression contained in Wyman *v.* Halstead, 109 U. S. 654, to the effect that,—''The general rule of law is well settled, *that for the purposes of founding administration,* all simple contract debts are assets at the domicile of the debtor.'' Based upon this excerpt from the decision of this Court in the case referred to, the major premise of the decision of the Supreme Court of South Carolina herein is that therefore the situs, even for purposes of inheritance taxation, of a

debt due to a deceased person is at the domicile of the debtor and not at the domicile of the creditor.

We submit that manifestly the excerpt from Wyman *v.* Halstead quoted (which is really an obiter, but which correctly states a general rule) means that the existence of a duty on the part of a debtor to pay will support the granting of letters of administration at such debtor's domicile, which is an entirely different thing from the situs of a debt for taxation purpose. This distinction is made in Rwy. *v.* Sturm, 174 U. S., 710. However this may be, the pertinent fact is that the decision of the Supreme Court of South Carolina was rendered before the Blodgett decision, and that any force whatsoever that has been contained in the major premise of the decision of the Supreme Court of South Carolina herein has been destroyed by that decision, which in specific terms holds that for purposes of inheritance taxation whatever may be the "discussion and criticism of the application of enforcement of the maxim," *mobilia sequuntur personam,* elsewhere, that, so far as the Supreme Court of the United States is concerned, "that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

We submit that manifestly the meaning of the rule referred to in Wyman *v.* Halstead as affecting such a case as this, is that if the Beidler estate were under any necessity to sue the Santee Company that the obligation of the Santee Company to pay would constitute such an asset as would permit the taking out of ancillary letters of administration in South Carolina. This is a very different thing from fixing a

new taxable situs wherever a debtor resides. If this doctrine be established then in every case in which there is a debtor in one State and a creditor in another, there will necessarily be two State inheritance taxes (given the necessary legislation). We have seen in the Fuller case, the Bliss case, the Gordon case and the Chadwick case, that this is not necessarily so. This was the basis of the Graff case which the Supreme Court of Minnesota in the later Chadwick case was careful to put on another basis. The cases referred to establish the fact, not only that *the* real and substantial situs of a debt is at the domicile of the creditor and not that of the debtor, but specifically the fact that there is not *a* taxable situs at the domicile of the creditor arising out of that fact alone. It can arise only when a necessity to resort to the laws and courts of that State is affirmatively shown. If the principle invoked by the Supreme Court of South Carolina is correct, it would have applied absolutely to the Blackstone case, but this court therein announced no such holding.

Again, if actual situs is meant, the application of such a doctrine would make the death of a creditor automatically shift the situs of a debt from his domicile to the debtor's domicile. At the moment before Mr. Beidler's death the situs of the debt herein would be in Illinois, and in South Carolina the moment after.

The Question of Title to the Indebtedness.

The Supreme Court of South Carolina basing its reasoning largely upon its decision of Dial *v.* Gary,

14 S. C., 571, and Hayward *v.* Williams, 57 S. C., 235, held further that the debt due Mr. Beidler is taxable in South Carolina because the title of Mr. Beidler's domiciliary executor in Illinois to the debt is not complete without the aid of the laws of the State of South Carolina to complete it, because (they argue), a domiciliary executor could not enter the State of South Carolina and sue in its courts but must seek the appointment of an ancillary administrator in South Carolina, hence that the title to the debt "is in abeyance until an ancillary administrator be appointed by the courts of this State to receive it and perfect the succession," (Transcript p. 109), and because in the decision stated (Dial *v.* Gary), it is held that inasmuch as the foreign domiciliary executor has not title to such a debt, that his assignee, deriving therefore no title from his assignment, could not maintain an action in South Carolina.

The question that might be involved in the Beidler case, we submit to the contrary, would not be what laws the executors of Beidler's Estate would be confronted with if they endeavored to enter South Carolina to bring suit against the Santee Company, but the question would be whether under the laws established by the Supreme Court of the United States and by the laws of other States, the Executors of Beidler actually had title to the debt due by the Santee Company, in fact, in Illinois, upon the death of Beidler, and if that became pertinent whether such executors or ancilliary administrators acting for them in other States, or the assignees of the executors might bring suit by attachment to collect the debt in Massachusetts, New York, Pennsylvania, Arkansas or Maryland.

We submit that the doctrine in force in South Carolina as construed in the Beidler decision by the Supreme Court of South Carolina and as gathered from Dial *v.* Gary and from Heyward *v.* Williams, is opposed to the law as established by this Court and by the great majority of State Courts, South Carolina to the contrary holding with a meager minority. To this effect we cite:

Wilkins v. Ellett, 9 Wall. 740, and 108 U. S., 156.

This interesting case went to the United States Supreme Court twice and the principles therein enunicated have been followed in myriads of cases in which it has later been cited. In the Wilkins case, the decedent, one Quarles died in Alabama. A resident of Tennessee, one Clark, owed Quarles $3,500 *on open account*. An administration was granted in Alabama. Clark, the Tennessee debtor, paid the debt to the Alabama administrator. Later an administration was taken out in Tennessee. The question then arose as to whether or not the payment to the Alabama administrator absolved the Tennessee debtor of the debt. In these two decisions the Supreme Court of the United States settled the question of the title of a domiciliary executor or administrator to an open account debt (and the incidental question of the right of an assignee of a domiciliary executor or administrator to sue in another State), relied on by the South Carolina Supreme Court in its decision herein, establishing a doctrine directly to the contrary of the rule adhered to by the South Carolina Court. Said the Supreme Court of the United States:

"The original administrator, therefore, with letters taken out at the place of the domicile, *is invested with the title to all the personal property of the deceased* for the purpose of collecting the effects of the estate, paying the debts, and making distribution of the residue, according to the law of the place, or directions of the will, as the case may be (9 Wall., 742)."

Again:

"There is no doubt that the succession to the personal estate of a deceased person is governed by the law of his domicile at the time of his death; that the proper place for the principal administration of his estate is that domicile; that administration may also be taken out in any place in which he leaves personal property; and that no suit for the recovery of a debt due to him at the time of his death can be brought by an administrator as such in any State in which he has not taken out administration.

"But the reason for this last rule is for the protection of the rights of citizens of the State in which the suit is brought; *and the objection does not rest upon any defect of the administrator's title in the property, but upon his personal incapacity to sue as administrator beyond the jurisdiction which appointed him.*

"The administrator, by virtue of his appointment, and authority as such, *obtains the title in promissory notes or other written evidence of debt,* held by the intestate at the time of his death, and coming to the possession of the administrator; *and may sell, transfer and indorse the same; and the purchasers or indorsees may maintain actions their own names against the*

> *debtors in another State*, if the debts are negotiable promissory notes, or if the law of the State in which the action is brought permits the assignee of a chose in action to sue in his own name. Harper *v.* Butler, 2 Pet., 239; Shaw, C. J., in Rand *v.* Hubbard, 4 Met. 252-260; Peterson *v.* Chemical Bank, 32 N. Y., 21." (109 U. S., 258. Italics added.)

In passing it is to be noted that in the authorities just quoted by the Supreme Court of the United States to the effect that an assignee of an executor may sue in his own name upon a chose in action are decisions from the Supreme Courts of Massachusetts and of New York. Other decisions to the same effect from said courts and the Supreme Court of Pennsylvania are: Maas *v.* Bank, 176 N. Y., 377; Hutchins *v.* Bank, 12 Metc., 421; and in Pennsylvania, Harris *v.* Hall, 11 Pa. Co., 53 (Aff. 148 Pa., 345). In Scher *v.* Adams, 220 App. Div., 309, the right of one to maintain an action in New York State upon a debt which has been assigned to him by a New Jersey domiciliary executor, is expressly upheld. In Bostwick *v.* Carr, 165 App. Div., 55; 151 N. Y. S., 74, and in St. Louis Rwy. Co. *v.* Cleere, 76 Ark., 377, the right of a foreign domiciliary executor *personally* by virtue of existing enabling statutes of said states, to enter the *States of New York and of Arkansas* and there maintain an action on a debt without the appointment of an ancillary administrator, is established. This fact was recognized by this Court in Lawrence *v.* Nelson, 143 U. S., 222, and

in Hayes *v.* Pratt, 147 U. S., 569. In any other state involved ancillary administration could be taken out. Hence, beyond doubt the debt could be collected by the Beidler Estate without entering South Carolina.

Directly opposed to the holding of the South Carolina court that the title to the debt is "*in abeyance*" until an ancillary administrator is appointed in South Carolina, is the decision of the Supreme Court of Massachusetts in the case of Adams *v.* Batchelder, 173 Mass., 258; 73 A. S. R., 282—a very similar case to the Beidler case as to the nature of the debt involved—in which the Supreme Court of Massachusetts, in an opinion delivered by Justice Holmes, said:

> "*The debt was not suspended until the appointment of the ancillary administratrix.* * * * As is said in Wilkins *vs.* Ellett, 108 U. S., 256, the objection to the administratrix bringing an action here '*does not rest upon any defect in the Administrator's title to the property*, but upon his personal incapacity to sue as administrator beyond the jurisdiction which appointed him'." (Italics added.)

To the same general effect is the language of the New York Court of Appeals in Maas *v.* Bank, *supra*, 98 A. S. R., 691:

> "Payment to the personal representative is good, because at the death of the intestate *he becomes entitled to all his personal property wherever situated*, and having the legal title thereto he can demand payment." (Italics added.)

The gist of the whole matter, we submit, is simply that because the domiciliary executor has title to all property of the estate, by virtue of his office, and for this reason alone, that payment to him is good.

24 *Corpus,* 1118, states the rule:

> "The general rule is that the title of a domiciliary representative extends to all of decedent's personal estate wherever situated, although in some jurisdictions the title of the domiciliary representation is held to be limited to assets within the jurisdiction."

Then in a footnote it is shown that the *minority rule is maintained only in South Carolina* and two other states.

A host of decisions following the doctrine of Wilkins *v.* Ellett upon both points referred to are set out in 24 *Corpus Juris,* 1118, and 3 U. S. Supreme Court Digest 3130.

The Supreme Court of South Carolina in its own very recent decision *In re* Wolfe, Administrator *v.* Bank of Anderson, 123 S. C., 208; 116 S. E., 451, held:

> "However, it has been generally held that a domiciliary representative may accept voluntary payment of debts from debtors residing outside of the jurisdiction in which the grant of letters was made, provided there are no debts due from the estate in the jurisdiction where a foreign debtor of the estate resides; and in many jurisdictions the absence of debts due by the estate does not seem to be a prerequisite to the validity of a voluntary payment to the domiciliary executor or administrator by a nonresi-

> dent debtor, a voluntary payment being made in this manner being held final and conclusive as against an ancillary administrator subsequently appointed, and a bar to a suit brought by such subsequently appointed ancillary administrator. The reason for this rule is *that the duties of a domiciliary administrator are general and unlimited. He is invested with a title to all the property of the deceased* for the purpose of collecting the effects of the estate, paying the debts, and making distribution of the residue according to the law of the place."

It is difficult, we submit, to reconcile the doctrine announced by the Supreme Court of South Carolina in the Beidler case, that the title of a domiciliary administrator in another State to a debt owed to the decedent by a resident of South Carolina is "in abeyance" and is not complete until the estate comes within the State of South Carolina and invokes its laws by the appointment of an ancillary administrator within this State, with the doctrine recognized in the Wolfe case by the Supreme Court of South Carolina and established by this Court in the Wilkins case, that such foreign domiciliary administrator may accept the payment of a debt under Wilkins *v.* Ellett, and give full acquittance therefor. It is submitted that only the fact that the domiciliary administrator in the decedent's State *has title to the debt* would give him the right to accept payment and to give full acquittance therefor.

The decision of the Supreme Court of South Carolina that the title to the debt is held "in abeyance" in

South Carolina until an ancillary administrator is appointed in this State is directly in line with said court's action in ignoring in its decision herein the maxim "*mobilia sequuntur personam.*" If this maxim may successfully be ignored, then it could successfully be argued that the title to the debt was held in abeyance in South Carolina. But if, under Silberman *v.* Blodgett, the maxim is controlling, then the debt in question was an intangible existing in Illinois when Mr. Beidler died. Instantly upon their qualification, title to it as an intangible then existing in Illinois automatically passed upon Mr. Beidler's death to his domiciliary executors in Illinois, without the aid of the South Carolina laws or courts.

Again, specific attention is called to the fact that the whole doctrine of the Supreme Court of South Carolina as set up in Dial *vs.* Gary, *supra*, is for the protection of creditors of the decedent's estate within South Carolina, and for no other purpose. This appears specifically in the decision of Dial *vs.* Gary, in which decision it is recognized that unless there are such South Carolina creditors that the doctrine fails.

In the Beidler case there is absolutely no evidence, because there could be none, that there are any South Carolina creditors of Mr. Beidler. He owed no debts within the State of South Carolina.

Referring to the South Carolina decision of Dial *vs.* Gary, we specifically call the attention of the court to the Iowa decision of Campbell *vs.* Brown, 52 American Reports, 446, in which the decision of Dial *vs.* Gary

is referred to and in which the fact that the doctrine enunciated is opposed to that of Wilkins *vs.* Ellett as decided by the Supreme Court of the United States, is adverted to. The Iowa Supreme Court therein refused to follow the doctrine of Dial *vs.* Gary, but adhered of course to the doctrine enunciated by the Supreme Court of the United States in Wilkins *vs.* Ellett.

The Attachment Question.

Beyond the objection that under the South Carolina decisions the domiciliary executors of the Beidler estate in Chicago did not succeed to the title to the debt due Mr. Beidler by the Santee Company, the Supreme Court of South Carolina did not deny, but practically in terms admitted, that the Beidler estate, through the situation that existed at the moment of Mr. Beidler's death, would have been able to enter the courts either of Massachusetts, New York, Pennsylvania, Maryland, Arkansas or Missouri, and in any of said states to have attached and garnisheed the debt owing by the Brooklyn Cooperage Company and the American Sugar Refining Company to the Santee Company, and thus to have collected the indebtedness of the Santee Company to the Beidler estate directly through suit brought by the Illinois domiciliary executor as is allowed by statute in New York and Arkansas, or through an ancillary administrator, or by assigning the debt to a citizen of one of the states in question. In other words, but for the objections above noted, the Supreme Court of South Carolina seems to admit that no necessity would ever exist on the part of the Beidler

estate to enter the courts of South Carolina or to resort to its laws. We argued this matter fully before the Supreme Court of South Carolina and evidently to its satisfaction, except for the objections herein referred to, which objections we have hereinbefore referred to.

For these reasons we are not setting out in our argument in chief in order that the same may not be unduly prolonged, a detailed argument upon the question of the ability of the Beidler estate to collect its debt in other states save South Carolina. But, we are setting out a detailed statement of the evidence admitted and of the laws of the various states in question and of the general law of the land upon the subject of the right of the Illinois domiciliary executors or ancillary administrators or assignees to attach in the states in question the debt due by the corporations in question to a South Carolina Corporation. We submit to this Honorable Court that in the appendix will be found full data upon all questions that may be involved in regard to the attachment question, and full evidence of the complete collectibility of the debt of the Santee Company to the Beidler estate by attachment in any of the six states suggested and without resort to the laws of the State of South Carolina.

The Doctrine of Making the Maxim and the Situs Yield.

In some of the decisions there are references to the right of a state by legislative enactment, to make the maxim "*mobilia sequuntur personam*" and the situs of a debt at the domicile of the creditor yield, and of the

right of a state by legislative enactment to assign a situs in a state other than that of the domicile of the creditor. We mention this matter herein simply by way of elimination. This doctrine is manifestly not applicable to the present case. It was not even claimed in the argument before the Supreme Court of South Carolina that said doctrine was applicable or is there any reference whatsoever to said doctrine in the decision of the Supreme Court of South Carolina.

The inapplicability of the doctrine to the Beidler case is manifest from the following considerations:

(1) It would certainly be taking property without due process of law to attempt to base the present proposed inheritance tax upon the idea of a supposed power of the Legislature of South Carolina to make the maxim and the situs in question yield, unless there was at the moment of Mr. Beidler's death a Statute in South Carolina purporting to have this effect. This Court has directly so ruled in New Orleans *vs.* Stempel, 175 U. S., 312. As appears hereinbefore the Inheritance Tax Act of South Carolina as it existed at the moment of Mr. Beidler's death, made no attempt whatsoever at making the situs of a debt to a non-resident yield. It was only after Mr. Beidler's death and after the decision of the Supreme Court of South Carolina in the Fuller case that the Amendatory Act was passed which might be construed as a legislative attempt to make the maxim and the situs yield as to estates or persons dying after its enactment. No claim whatsoever is made that the Statute was retroactive. It is to be especially noted that the Supreme Court of South

Carolina in its decision herein, does not construe the Statute that existed at the date of Mr. Beidler's death as having the effect of being an attempt to make the maxim and the situs yield; but the construction placed upon the Statute of the Supreme Court of South Carolina is, without any effort whatsoever at making the maxim and the situs yield, that the debt in question constituted property within the State of South Carolina through its inherent nature and without any legislative control whatsoever being exerted over it.

(2) Under the decision *In re* New Orleans *vs.* Stempel, *supra,* we submit that a State Legislature can not by mere legislative enactment constitute a *situs* within a State and make the maxim "*mobilia sequuntur personam*" yield as to a thing, for example a mere indebtedness to a non-resident of said State, which has no kind of existence already in being in the State in question. In other words if the thing to be taxed, the indebtedness in this case, has no existence in the State of South Carolina, the Legislature of South Carolina may not reach out beyond its borders and bring it within the State and subject it to taxation. In the Stempel case the Court quotes with approval from the Louisiana decision of Railey *vs.* Board of Assessors, 44 La. Ann., 765, to the effect stated, as follows:

> "There is no doubt of the legislative power to modify the rule of comity, *mobilia personam sequuntur, in many respects.* Movables having *an actual situs* in the State may be taxed there, though the owner be domiciled elsewhere. *Even debts may assume such concrete form in the evidences thereof that they may be similarly sub-*

> *jected when such evidences are situated in the State,* as in the case of bank notes, public securities, and possibly, of negotiable promissory notes, bills of exchange or bonds.
>
> "*But as to mere ordinary debts,* reduced to no such *concrete forms, they are not capable of acquiring any situs distinct from the domicile of the creditor, and no legislative power exists to change that situs so far as non-resident creditors are concerned.*" (Italics added.)

The Stempel case is full of the idea that there must already be something existent in the State in question before a legislature by mere legislative enactment may reach out and assign a taxable *situs* within the taxing State in order to raise revenue. It is true that in Liverpool *vs.* New Orleans, 221 U. S., 346, that it was held that by legislative enactment that a mere debt could be given a taxable *situs*, but the case is specifically based upon the fact that the debts therein rose out of a myriad of insurance policies actually solicited and actually written for the insurance company in question by its agents in Louisiana. The holding of the Court was that the debts in question had an actual existence and an actual business *situs* in Louisiana, and were things actually arising and actually existing in Louisiana to which the Legislature of Louisiana might assign a taxable *situs*, although the debts were due to a foreign corporation.

We submit that both of the considerations above clearly demonstrate the fact that the doctrine referred to can have no effect whatsoever over the Beidler case. Indeed no claim to that effect has been made either by

the defendant in error or by the Supreme Court of South Carolina, and the same is only mentioned as stated, by way of elimination.

Summary.

Leaving aside the question of a "business *situs*" which is discussed in the next section of this argument, we submit that the true consideration should be that of the character of the debt in question. We submit that under the Blodgett case and under the many decisions which it follows and enforces, that the *situs* of the open account indebtedness in question both before and after the death of Mr. Beidler, was in Illinois. We submit that it was not property within South Carolina that might be taxed and that for the State of South Carolina to endeavor to reach beyond its borders and to impose an inheritance tax upon said debt is a violation of the Fourteenth Amendment of the Federal Constitution.

We further submit that as the debt had no security, and was not evidenced by a bond, promissory note or specialty kept in South Carolina, that, as the *situs* of the debt was in Illinois that there was nothing to tax within the borders of South Carolina.

We further submit that if the doctrine of the Blackstone case is still to be fully applied, that its meaning upon its face and by unanimous interpretation that all courts including this Court have given to it, is that the burden is upon the State of South Carolina of showing, in some real and substantial way, that South Carolina is entitled to an inheritance tax for some service that

it might really perform for the Beidler estate. We submit that a huge inheritance tax is not lightly to be imposed, especially when it constitutes double taxation as it would in this case. We submit that for the State of South Carolina to be entitled to impose this tax that it must show some *quid pro quo* to the Beidler Estate, viz, that its laws or courts are actually going to perform some service for the Beidler Estate. We submit that there has been absolutely no such showing attempted. To the contrary, the showing in this particular case is that it is absurd to suppose that the Beidler Estate will need or require, or will in any fashion or form resort to the laws of the courts of South Carolina to complete the descent of this indebtedness from Mr. Beidler to his devisees, and that the effort to impose a tax is merely the assumption of a supposed power which does not in reality exist. We submit that it is not necessary or logical to assume that the Santee Company, owned absolutely by the Beidlers, will resist the payment of the debt. We submit, however, that if resistance on the part of the Santee Company must be assumed, that it is an absolutely established fact that the *situs* of the debt at the moment of Mr. Beidler's death was in Chicago and not in South Carolina, and that under the doctrine of this Court in Wilkins *vs.* Ellett, the moment the executors qualified, the title of the debt passed to them without any reference whatsoever to the laws of South Carolina and without the necessity of any assistance from these laws or the courts of South Carolina. We submit further and finally that if it be necessary to go to the extent of theorizing as to whether or not the debt could actually

by force of law have been collected outside of the State of South Carolina, that it has been abundantly shown that by the attachment or garnishment proceedings herein suggested that the debt could be collected in any one of six States other than South Carolina.

Hence, we submit that it was beyond the *power* of the State of South Carolina and was an infringement of the Fourteenth Amendment of the Federal Constitution, for the State of South Carolina to attempt to reach beyond its borders and to tax this indebtedness which legally existed beyond its borders and which did not constitute property within the State of South Carolina.

The Business Situs Question.

The South Carolina Tax Commission after the record for appeal to the Supreme Court of South Carolina was made up, requested the attorneys for the Beidler estate to furnish a detailed statement of the account between the Beidler estate and the Santee Company as it appears upon the books of Mr. Beidler kept in Chicago. With a view of allowing all parties freely to present to the court every possible question that might be raised herein from every angle, this request was cheerfully complied with and the Tax Commisison *based alone upon such detailed statement* which was printed as a supplement to the case herein, and without presenting or asking for one word of testimony as to actual course of dealing between the Santee Company and Mr. Beidler, claimed before the Supreme Court of South Carolina that the vital question in this case is

ruled by the so-called "business situs" law. The Supreme Court of South Carolina, in passing, and without the citation of any authority, sustained this contention.

We submit that such a showing falls far short of the test of what is necessary to establish a business situs, as laid down by this Court and other courts.

The "business situs" rule is an exception to the general rule that the situs of a debt is at the domicile of the creditor. To come within this principle the Tax Commission *dust have proven affirmatively the necessary facts* to establish the existence of the exception. All that is to be gathered from the account presented in the supplement is that from time to time Mr. Beidler deposited in the Corn Exchange Bank (certainly not in South Carolina but in Chicago, Illinois) large sums of money; and sometimes, evidently from his office in Chicago, sent checks to the Santee Company. There is no showing that Mr. Beidler had a loan agent or manager in South Carolina. There is no showing even that the loan was negotiated in South Carolina. The showing as made, on which alone the Tax Commission relies, falls far short of what the authorities which they relied upon below establish as the minimum requirement to establish a business situs in North Carolina. The principle upon which this exception to the general rule is based is well stated by the Mississippi court in *Adams v. Colonial Mortgage Co.*, 82 Miss., 263; 34 So., 482; 17 L. R. A. (N. S.), 138; 100 A. S. R. 633;

> "However phrased, the principle is this: That *wherever the money of a lender in one*

State is by the principal intrusted to the control of an agent in another State for the purpose of being kept in the latter State, and loaned out, collected and *reloaned, or habitually kept on deposit,* for safety merely, as held *In Re Romanie,* 127 N. Y. 80; 27 N. E. 759; 12 L. R. A., 401, so as thus to remain, through a course of dealing, *so long as to become localized as a part of the whole mass of personal property in the latter State,* such money acquires what is known as a 'business situs' for the purpose of taxation, as well as for certain other purposes not necessary to be dealt with here." (Italics added.)

In Cooley on Taxation (4th Ed.), Section 466, it is laid down:

"There is no business situs, it is held in the following cases: * * * * * * *

"4. *Where no business is done in the State by the owner or his agent relating to the credits taxed.*

"5. *Where there is no agent in the State and the owner* comes into the State only occasionally. *There is no business situs where the non-resident lender has no place of business or location or agent in the States, and where he accomplishes the loan outside the State,* although the negotiations for the loan were made by persons in the State and it was secured by mortgage on property in the State." (Italics added.)

In the footnote to this valuable work are cited three decisions in which, under the facts thereof, the exist-

ence of a "business situs" was denied and the imposition of a tax based thereon was actually upset, to wit,

> Adams *v.* Colonial Mortgage Company, *supra.*
> Reat *v.* People, 201 Ill., 469; 66 N. E., 242.
> Jamison *v.* Commonwealth, 120 Va., 137; 90 S. E., 640.

In the Adams case (from which we have hereinbefore quoted), the Colonial and United States Mortgage Company of Hull, England had actually made numerous loans, secured by mortgages, to citizens of Mississippi. These loans were mostly secured through a Mr. Glover, an attorney, some were secured by other attorneys, and some by direct application of the borrowers themselves. These applications were made to the local agency of the Company in Memphis, Tenn. The loaning company had no office or place of business within the State of Mississippi. The question submitted to the Supreme Court of Mississippi was whether the loans had a "business situs" in Mississippi and hence could be taxed therein. From the following quotation it will be seen that the Supreme Court of Mississippi squarely held that there was no business *situs* in Mississippi because there was no agent within the State of Mississippi, and because the business of lending was not conducted within the State. The court said:

> "We think on this statement of facts we are concluded by the case of State *v.* Smith, 68 Miss., 79, 8 South., 294, as to the Coahoma county case. This Court said in that case: 'There can be no doubt that, where an agency is created in this state for the loaning of money, and the business

> of loaning it is carried on here—this State being the locality in which the transaction is begun and completed—and the debt acquires a situs here, from the course of dealing between lender and borrower, through the agency established here, it is taxable; but where the nonresident lender has no place of business or location or agent in this State, and accomplishes the loan beyond the limits of the state, the fact that negotiations for the loan were made by persons in this State, and it was secured by mortgage on property in this State, does not subject it to taxation here! In the case before us the creditor has no agent in this state, and no place of business here. The money was not sent here to be loaned. The evidence of debt was not here. *The business of lending was not conducted in this State.* The debt was secured by a mortgage on property in this State, and the loan was obtained by the application of persons in the State transmitted to persons beyond its limits, who forwarded the money from without the State.' "

In the Reat case the Supreme Court of Illinois held that there could be no business situs and no tax where there was no agent within the state, and especially where there was no intention of *reloaning the fund* and thus carrying on a permanent business of loaning and reloaning. Said the court:

> "The holding of the cases decided by this Court would thus seem to be that where the owner of such credits or securities is a nonresident of Illinois, and is absent from that State, his securities, remaining in this State in the hands of an agent, are only subject to taxation

in this State *when they are so left in the hands of the agent for the purpose of having them renewed or collected, in order that the money realized from such renewal or collection may be reloaned by the agent as a permanent business.* The credits of the nonresident owner, so remaining in Illinois, must constitute the subject-matter *or stock in trade of the business of the owner as conducted by the agent.* In the case at bar there is no evidence that the notes and mortgage here under consideration were left by Mrs. Reat in Illinois for the purpose of being collected and *reloaned as a permanent business by any agent.*"

In the Jamison case the plaintiff, a resident of Maryland, had invested much money in many bonds and notes secured by deeds of trust on lands in Virginia, which securities were executed by residents of Virginia. Applications were made to him direct in Maryland. He had no office and no agent in Virginia. The Supreme Court of Virginia in ruling that there was no business situs involved and hence there could be no tax, said:

> "We take it for granted that it would not be contended that, if a non-resident were to come into a broker's office or elsewhere in this State and invest his money in a chose in action of any character as a loan, and do this repeatedly, he was engaged in business in the city or county where he made the investment or investments, within the meaning of the statute here under consideration. The evidence in this case shows no more than that Jamison acquired the bonds or notes in question in a precisely analogous manner; he simply purchased these

bonds or notes of residents of Virginia, secured on lands in Virginia, *and maintained no business domicile in Virginia, conducted either by himself or an agent.*

"The learned Attorney General cites a number of cases decided in the Supreme Court of the United States as supporting the contention that the test of the right of the State to tax these evidences of credit is not the presence in the State of the evidences of credit, not the jurisdiction over the person of the owner, nor the intervention of an agent, but the localization of the business from which they arise. An examination of these cases shows that the power of the State of origin of the credits to assess the same for taxation was upheld because *transactions in connection therewith were conducted within the State by agents of the creditor on the latter's behalf.*" (These italics by the Court.)

Turning to the decisions of this Court, it will be found that the meaning of the "business situs" doctrine is very well illustrated by the case cited by defendants in error below, viz, *Liverpool L. & G. Insurance Co. of New York v. Board of Assessors,* 221 U. S., 346, and by the other cases reviewed by the Court in that decision. That case involved the validity of a proper tax assessed by the State of Louisiana upon the amounts due a foreign insurance company by its policyholders within the State for premiums, upon policies written within the State, for which credits of thirty and sixty days had been extended, under a statute which definitely and specifically provided for

the assessment and taxation of credits due a non-resident "arising from business done" in the State. See State quoted at page 350 of 221 U. S. The tax was held not to be in violation of the 14th Amendment to the United States Constitution. The court said:

> "This Court has had repeated occasion to consider the validity of taxes imposed under the Louisiana Act. The case of *New Orleans v. Stempel*, 175 U. S., 309; 44 L. Ed., 174; 20 Supt. Ct. Rep., 110, arose under Chapter 106 of the statutes of 1890, but the pertinent features of the Act were the same. There it appeared that the assessed credits were evidenced by notes secured by mortgages on real estate in New Orleans; that these notes and mortgages were in that city, in the possession *of an agent*, who collected the proceeds and the interest as it became due, and deposited the same in a bank in New Orleans to the credit of the plaintiff, the guardian of the infant owners, who, like herself, were domiciled in the State of New York. The tax was sustained. In *State Assessors v. Comptoir National D'Escompte*, 191 U. S., 388; 48 L. Ed., 232; 24 Sup. Ct. Rep., 109, the question arose under the statute of 1898. In that case, a foreign banking company did business in New Orleans and there made *loans through a local agent*. The loans were made upon collateral security, the customer drawing his check, which was treated as an overdraft and held as a memorandum of the indebtedness. The court decided that the credits so evidenced, created in the Louisana business, were taxable in that State. In *Metropolitan Life Insurance Co. v. New Orleans*, 205 U. S., 395; 51 L. Ed., 853; 27 Supt. Ct. Rep., 499, also arising under the

> Act of 1898, the validity of a similar tax was upheld. That case was one of *loans made through the local agent* of the insurance company, a New York corporation doing business in Louisiana, to its policyholders upon the security of their policies." (Italics added.)

In the case last referred to this court, in sustaining the tax, said:

> "We are not dealing here *with a single credit or a series of separate credits, but with a business.* The insurance company chose to enter *into the business of lending money within the State of Louisiana, and employed a local agent* to conduct that business." (Italics added.)

The Stempel case (175 U. S., 309) referred to in the foregoing quotation is typical of the cases in which a "business situs" for taxation purposes has been sustained; in which a non-resident capitalist usually an insurance company maintains within the taxing State an agency, and within said State and through such agency negotiates loans, and upon making collections makes new loans, thereby making the fund a "revolving fund" and actually doing a loaning business in the State in question.

In the light of the foregoing authorities, it would seem apparent that the business situs doctrine could not soundly be applied to the debts due Beidler by the Santee Company. There it not the slighest foundation in the case for inference that Mr. Beidler had any agent or agency in the State of South Carolina either

for the purpose of making these loans or of collecting them, or that he was conducting any general lending business within the State. On the contrary, the book account tends to show that the balance due Beidler is merely a single credit or, at most, a series of separate credits due by a single debtor on account of a personal loan or loans made by Beidler to the Santee Company outside the State and payable to him outside of the State. *There is no showing, claim or pretense that the loan or loans were negotiated in South Carolina.* Apparently, the money was placed to the credit of the Santee Company, or checks mailed to it, not in South Carolina, but in Chicago, Illinois. The debts, under the well-settled rule, were payable at the domicile of the creditor—Chicago, Illinois. The controlling and legal book entries upon which Mr. Beidler would have had to sue, if suit had been necessary, were in Chicago.

But the Supreme Court of South Carolina ruled,—(Transcript p. 101), "Both the debt and the dividend were involved in the assets of the Santee River Cypress Lumber Company; they were part of its working capital." To this holding we ask to reply that in so far as the proceeds of these loans were money or property in the State of South Carolina the value thereof was reflected in the *assets* of the Santee Company upon which the State levied its property tax year by year and in the *stock* of the Santee Company upon the transfer of which under the Inheritance Tax Statute the

State has already in this proceeding levied and collected a tax of more than sixty thousand dollars at a valuation of $204 per share (par value $100).

Respectfully submitted

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Counsel for Plaintiff in Error.

APPENDIX.

The Beidler Estate Did Not of Necessity Have to Enter the Courts of South Carolina to Enforce the Collection, if Resistance Were Made, of Its Debt Against the Santee Company.

It is the claim of the plaintiffs in error that if the necessity arose its debt against the Santee Company could be collected by attaching in any one of five or six States the exceedingly large indebtedness of the Brooklyn Cooperate Company and of the American Sugar Refining Company to the Santee Company, which indebtedness is vastly larger than the debt of the Santee Company to the Beidler estate.

The "case" before the Supreme Court of South Carolina herein fully develops all of the facts upon which this contention is based, which facts are reproduced in the present Transcript of Record. We now desire to bring these facts to the Court's attention.

Exhibit "A" (pp. 20-33) comprises a contract between the Santee Company and the Brooklyn Cooperate Company with the guarantee thereof by the American Sugar Refining Company, by which the Santee Company sold to the Brooklyn Company the timber upon sixty-nine tracts of land in South Carolina for $4,885,343.20. At pp. 28-33 will be found the unconditional guarantee of payment by the Brooklyn Company by its parent company, the American Sugar Refining Company, which guarantee was accepted in writing by the Santee Company. The contract in question uses

the expression "let" and "rental payments," but is undoubtedly a contract of sale and a mortgage upon the property sold and would be so construed by the courts of South Carolian under *Singer Machine Company v. Smith*, 40 S. C., 529, and kindred decisions. This contract provides for an initial payment of Twenty-five Thousand ($25,000) Dollars and quarterly payments during each year of its life of Sixty Thousand, Three Hundred Seventy-nine and 29/100 ($60,379.29) Dollars. Before the date of Mr. Beidler's death nine of these quarterly payments had been made, hence by simple calculation the amount that had been paid before this event was Five Hundred and Sixty-eight Thousand, Four Hundred Thirteen and 61/100 ($568,413.61) Dollars, and upon the date of Mr. Beidler's death there remained unpaid the sum of Four Million, Two Hundred and Eighty-six Thousand, Nine Hundred and Twenty-nine and 59/100 ($4,286,929.59) Dollars—vastly more than the amount due by the Santee Company to the Beidler estate, and even at the present time as much as three and one-half million dollars is still unpaid.

It is recited in the contract in question that the Santee Company is a corporation of South Carolina, the Brooklyn Company a corporation of New York State, and that the American Sugar Refining Company is a corporation of New Jersey, and it is stipulated in the "transcript" that these recitals are true and correct.

It remains to consider (a) whether the Brooklyn Company and the American Sugar Refining Company

are amply solvent, and (b) whether the debt which they owe, or will in the future owe, to the Santee Company could be reached by attachment or garnishment in any other State save South Carolina.

It should be noted in passing that in all of the laws of attachment and garnishment as will hereinafter be shown in detail, that a debt may be reached which is not yet due, the same to be paid to the attaching creditor when it falls due under the supervision of the court.

Hence the fact that much of the debt is not due by the Brooklyn Company and the Sugar Refining Company to the Santee Company does not militate against the right of the Santee Company to attach or garnish.

The Ample Solvency of the Brooklyn Cooperage Company and the American Sugar Refining Company.

Exhibit "B" (pp. 33-38) is an affidavit of Mr. M. B. Cross, who, for the purpose of amply proving the great wealth of these two companies, actually during August and September, 1925, visited some of the plants of these companies in New York City, in Brooklyn, in Boston, in Philadelphia, and in Baltimore. He summarizes the results of this visit as follows, giving the value of the visible property of each company in each State visited:

	Brooklyn Cooperage Company	American Sugar Refg. Company
New York	$750,000.00	$5,750,000.00
Massachusetts	100,000.00	2,500,000.00
Pennsylvania	150,000.00	4,500,000.00
Maryland	200,000.00	10,000,000.00
	$1,200,000.00	$22,750,000.00

It is hereinafter shown that no mortgages exist upon any of said property.

It is further hereinafter shown that both companies own much more property and many other plants than those visited by Mr. Cross, it having been deemed unnecessary for him to continue his visit for the purposes of this proceeding to other points where the companies in question owned property.

The showing of the wealth of these companies is continued in Exhibits "L," "M," and "N."

It was agreed between the parties hereto that no question be made (p. 7) "as to the form in which said evidence was presented to the commission," in other words, the fact that the exhibits referred to were not sworn to and were not presented in a more formal shape was expressly waived by the Tax Commission.

The three Exhibits in question then rank as declarations of the American Sugar Refining Company of the fact that it owns all of the stock in the Brooklyn Cooperage Company; and its declaration as to what other property it owns, and of the condition of its business, and the value of its assets, constitutes ample and complete proof of its entire solvency and of its ability, and of the ability of the Brooklyn Cooperage Company to pay the debt that it owes to the Santee Company. These documents further and entirely prove the existence of property both of the Brooklyn Company and of the Sugar Refining Company in the States named which could be reached by an attachment or garnishment at the suit of the Beidler estate.

Exhibit "L" is the application which was accepted

and approved for the listing of its bonds amounting to $30,000,000, upon the New York Stock Exchange. It is shown in this application and in the contract between the Sugar Refining Company and the Chase National Bank (Exhibit "N" p. 84), that the bonds are not secured by a mortgage upon the property of the Sugar Refining Company, and that no mortgage would be allowed to exist during the currency of the bonds upon the property of either the Sugar Refining Company or upon property of the Brooklyn Cooperage Company, unless the bond issue were secured thereby.

Under the heading of "description of property" (pp. 70-71) the Sugar Refining Company sets out in detail its various plants, and in p. 71 the application sets out the fact that the Brooklyn Cooperage Company owns vast timbered areas, one hundred thirteen and one-half miles of railroad, and factories in Boston, New York, Philadelphia, Georgetown, Red Cross (La.), Chalmette, and Baltimore. In Exhibit "M" (pp. 81-84) which is an excerpt from an address of the president of the American Sugar Refining Company, the relationship between the parent company and the Brooklyn Company is fully set out, it being explained that the Sugar Refining Company "in shipping their product to the four quarters of the globe required each year millions of barrels," and that the Brooklyn Cooperage Company is used to furnish these barrels. Coming closer to the issue is the statement of the American Sugar Refining Company of December 31st, 1924, found at pp. 82-84 of the record.

This statement is for the year during which Mr. Beidler died. It shows assets of the Sugar Refining Company amounting to $162,433,541.11. There are no liens upon any of this property. The liabilities including the bond issue were but $36,234,490.71, showing a net worth of more than one hundred and twenty-two million dollars.

We submit that these exhibits with the testimony of Mr. Cross fully establishes the vast wealth of these companies and the existence of ample property subject to garnishment or attachment in any of the jurisdictions hereinafter referred to.

Hence it remains to consider whether or not an attachment or garnishment could be maintained in any one of the States referred to in the record, to-wit: New York, Massachusetts, Pennsylvania, Maryland, Missouri or Arkansas.

The Attachment or Garnishment Question.

As we have pointed out in our argument in chief in the consideration of the decision of this Court *in re*, Wilkins *vs.* Ellett, it was held therein that a domiciliary executor might legally assign such a claim as the debt of the Santee Company to the Beidler Estate and that the assignee might sue in any State in which an assignee is allowed to maintain an action in his own name. In this consideration it was shown that in New York State it has been definitely decided that the assignee of a New Jersey domiciliary executor might personally maintain an action upon a debt in New York. See Scher *vs.* Adams, 220 App. Div., 309. The

same situation exists in Massachusetts and Pennsylvania, it appears, by decisions set out by this Court in the Wilkins case. Such decisions are Harper *vs.* Butler, 2 Pet., 239; Rand *vs.* Hubbard, 4 Met., 252-260; Peterson *vs.* Chemical Bank, 32 N. Y., 21; Harris *vs.* Hall, 11 Pa. Co., 53, 148 Pa., 345.

Again it is to be especially noted, that there are enabling statutes existing in the States of New York and in Arkansas which specifically permit a foreign domiciliary executor personally to enter the courts of New York and of Arkansas and there to maintain an action on a debt, without the appointment of an ancillary administrator. Bostwick *vs.* Carr, 165 App. Div., 55; 151 N. Y. S., 74; St. Louis Rwy. Co. *vs.* Cleere, 76 Ark. 377; Laurence *vs.* Nelson, 144 U. S., 272; Hayes *vs.* Pratt, 147 U. S., 569.

It has been specifically shown that the Brooklyn Cooperage Company and the American Sugar Refining Company own in New York State property worth vastly more than the debt involved herein; and that in Arkansas they have considerable holdings. In any other State involved, ancillary administration could be taken out in order to bring action.

Hence, on the threshold of the attachment question, it is a fact that there would be no difficulty and no question about a plaintiff being legally available to maintain an action against the Santee Company in any of the States involved, in which it would be proposed to attach the debt due by the Brooklyn Cooperage Company and the American Sugar Refining Company to the Santee Company. The next question is whether such an attachment would lie.

The general right of a creditor to attach, in a foreign State, a debt owing to his immediate debtor—a non-resident of such State—is fully established by this Court in a line of decisions beginning with Rwy. Co. *vs.* Sturm, 174 U. S., 710.

In the *Sturm case,* Sharrett, a citizen of Kansas, was sued in Missouri by one Stewart for debt, and Sharrett's wages earned in Kansas while working for the Rock Island Railway (an Iowa corporation, doing business in Missouri), were attached in Missouri. The Supreme Court of the United States held that the proceeding was one *in rem;* that in attachment matters the *situs* of the debt was unimportant; that the necessary thing was to find and serve, in the jurisdiction of the State in which the action is brought, *a debtor who owes a debt to the original debtor of the plaintiff.* Hence the Supreme Court of the United States upheld the action of Stewart in Missouri by the attachment against the Rock Island, of a debt due Sharrett in Kansas.

There are two other decisions of the Supreme Court of the United States which are directly in point and which conclusively show that the Beidler estate could in any State in which the Brooklyn Company or the Sugar Refining Company owns property and does business, attach or garnish the debt due by these companies to the Santee Company. These two cases are *Harris vs. Balk,* 198 U. S., 215, and its companion case of *Louisville and Nashville Railroad Company vs. Deer,* 200 U. S., 176.

The case of *Harris vs. Balk* is especially in point as the statute laws of the State of Maryland which are

set out in the supplement to the transcript herein are directly involved.

The facts underlying this decision were that both Harris and Balk were residents of North Carolina; Harris owed Balk one hundred and eighty ($180.00) dollars on open account with no written evidence of the obligation in existence. Balk in turn owed Jacob Epstein, a resident of Baltimore, three hundred ($300.00) dollars. Harris visited Baltimore on business and while there was served with a writ of attachment, attaching the debt due Harris to Balk in an action brought by Epstein against Balk, the attachment being based on the fact that Balk was a non-resident of Maryland. Balk was not served personally but only in the manner provided by the Maryland Statute, viz: the setting up at the Courthouse door of a copy of a summons and short declaration. (See Section 8, Maryland Statutes, set out in supplement.)

At a later date Balk commenced action in North Carolina against Harris for the one hundred and eighty dollars. Harris set up the Maryland judgment as a bar; the case went to the Supreme Court of North Carolina four times, and that Court held that the Maryland attachment was illegal because as Harris was a non-resident of Maryland and was only casually in the State, that the *situs* of the debt due by Harris to Balk was not in Maryland but was in North Carolina.

The Supreme Court of the United States in a learned decision held that the attachment was entirely valid and the fact that Harris had paid the debt due to Balk to Epstein was a bar in Harris' favor. The Court said:

"We do not see the materiality of the expression 'situs of the debt,' when used in connection with attachment proceedings. If by *situs* is meant the place of the creation of the debt, that fact is immaterial. If it be meant that the obligation to pay the debt can only be enforced at the situs thus fixed, we think it plainly untrue. *The obligation of the debtor to pay his debt clings to and accompanies him wherever he goes.* He is as much bound to pay his debt in a foreign State when therein sued upon his obligation by his creditor, as he was in the State where the debt was contracted. *We speak of ordinary debts, such as the one in this case.*"

It is to be observed that the theoretical case of the executors of the Beidler estate suing the Santee Company in Maryland (for instance), where both the Brooklyn Company and the Sugar Refining Company maintained plants and do business, presents a much stronger case and a case subject to fewer possible legal objections than that presented in *Harris v. Balk*, for the reason that in *Harris v. Balk*, Harris was merely casually and temporarily in the State of Maryland, whereas the Brooklyn Company and the Sugar Refining Company are actually there doing business and maintaining extensive and valuable plants, with agents always subject to the service of process.

The next case in the series, *L. & N. R. R. v. Deer* (200 U. S., 176), it is submitted, is practically on all fours with the situation which would exist in the theoretical case of the Beidler executors against the Santee Company with attachment of the debt, in Maryland

or some other State, owed to the Santee Company by the Brooklyn Company or the Sugar Refining Company.

In the *Deer case*, one Brock brought an action in the Courts of the State of Florida against Deer, a resident of the State of Alabama, for debt and in Florida garnished a debt due Deer by the Louisville and Nashvill Railroad, which railroad was as to the State of Florida a foreign corporation doing business, however, in Florida. The defendant therein, Deer, was served by publication. Brock obtained judgment against Deer and against the railroad as garnishee and the railroad paid to Brock the debt that it owed Deer. Deer later sued the railroad in Alabama and the railroad set up the Florida garnishment proceeding in bar. The Alabama Court held that the Florida garnishment proceeding was illegal. The Supreme Court of the United States reversed the Alabama decision and held, following the Balk decision, that the proceeding in Florida was entirely legal and constituted a bar to the Alabama action.

The exact parallelism between a theoretical suit in favor of the Beidler executors in Maryland, New York or any other State is immediately apparent. The Santee Company would be a non-resident of Maryland or New York (for instance) just as Deer was. The Brooklyn Company and the American Sugar Refining Company in Maryland (but not in New York) would be foreign corporations doing business in that State and maintaining a plant therein, just as the Louisville and Nashville Railroad was in Florida.

The very statute law discussed in *Harris v. Balk* as having been in existence in Maryland in that case, which the Supreme Court of the United States held was amply sufficient, is set out in evidence in the *Beidler case* in the supplement to the transcript, and we submit that it is thereby abundantly shown upon the authority of the United States Supreme Court that the theoretical action of the executors of the Beidler estate against the Santee Company could be maintained by an attachment or garnishment in any of the States as to which a showing has been made by the appellant.

There are countless decisions in this country upon this general question. The foregoing decision of the United States Supreme Court seems to be directly in point and to illustrate what the exact situation would be should the Beidler estate enter the Courts of New York, Massachusetts, Pennsylvania, Arkansas, Missouri or especially Maryland to sue the Santee Company, serving it by publication and attaching the debt due it by the Brooklyn Company and the Sugar Refining Company, each being corporations either residents of or doing business and maintaining property of a substantial nature in the State in which the attachment suit might be brought.

We ask further to cite a few general authorities which seem to be directly in point before turning to the showing made of the law of the six States named. These authorities are directed particularly to the point that for attachment purposes in any State in which

there is a general attachment law, that there is sufficient legal warrant to justify ataching a debt owing to plaintiff's debtor, by one residing or doing business in such State.

2 R. C. L., pages 805-6:

> "The right of a State through its tribunals to subject property situated within its limits, owned by non-residents, to the payment of demands against them, and the fact that this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciles, is too well established to admit of argument. But if service is had by publication, and there is no appearance for the defendant, the action is practically a proceeding *in rem* against the attached property, the only effect of which is to subject it to the payment of the amount which the Court may find due the plaintiff. In the case of movables their seizure under the attchment shows that their actual *situs* is within the jurisdiction of the Court. But in respect to intangible interest, debts, choses in action, bonds, notes, accounts, interests in corporate stocks and things of a similar nature, the question whether the *res* is within the jurisdiction of the sovereignty, where the process is issued, is not so readily determined. The general rule is well-settled that the *situs* of debts and obligations is at the domicile of the creditor. But the attachment laws of many States recognize the right of a creditor of a non-resident to attach a debt or credit owing or due to him by a person within the jurisdiction where the attachment issues, and to this extent the principle has been sanctioned that the laws of a

State, for the purposes of attachment proceedings, *may fix the situs of a debt at the domicile.*"

14 A. & E. Enc. of Law, pages 801-2:

"General Rule as to *Situs* of Debts not Applicable to Garnishment Proceedings.—The general rule that the *situs* of a debt for the purpose of distribution, taxation, etc., is at the residence of the owner, has been practically universally acknowledged not to apply in case of garnishment proceedings.

"Debts owing by Resident Garnishee to Non-Resident Defendant.—A convincing illustration of the doctrine that the *situs* of a debt is not necessarily fixed by the residence of the creditor is shown by the cases, which universally hold that a debt due from a resident debtor to a nonresident creditor may be subjected by garnishment proceedings to the payment of claims against such creditor, though service upon such creditor is by publication only."

Plimpton *v.* Bigelow, 93 N. Y., 592:

"In the case of tangible property, capable of actual manucaption, it must have an actual *situs* within the jurisdiction. But credits, choses in action and other intangible interests are made by statute susceptible of seizure by attachment. The same principle, however, applies in this case, as in the other, the *res*, that is, the intangible right or interest, to be subject to the attachment, must be within the jurisdiction. * * * Where the defendant, who owns a credit, is within the jurisdiction, there is no

difficulty through procedings in *personam* in reaching and applying it in discharge of his debt to the plaintiff. But where he is out of the jurisdiction, and the debt or duty owing to him, or the right he possesses exists against some person within the jurisdiction, attachment laws fastened upon that circumstance, and by notice to the debtor or person owing the duty or representing the right, impound the debt, duty or right, to answer the obligation which the attachment proceeding is instituted to enforce. In the case supposed the debt, duty or right, for the purpose of attachment proceedings, is deemed to have its *situs* or locality in the jurisdiction."

Douglass *v.* Phenix Ins. Co., 138 N. Y., 209, 219; 34 Am. St. Rep., 448; 33 N. E., 939; 20 L. R. A., 118:

"But it is a fundamental rule that in proceedings the *res* must be within the jurisdiction of the Court issuing the process, in order to confer jurisdiction: *Plimpton v. Bigelow,* 93 N. Y. 593. In the case of movables their seizure under the attachment shows that their actual *situs* is within the jurisdiction. But in respect to intangible interests, debts, choses in action, bonds, notes, accounts, interests in corporate stocks, and things of a similar nature, the question whether the *res* is within the jurisdiction of the sovereignty, where the process is issued, is not so readily determined. The general rule is well settled that the situs of debts and obligations is at the domicile of the creditor. But the attachment laws of our own and of other

> States recognize the right of a creditor of a non-resident to attach debt or credit owing or due to him by a person within the jurisdiction where the attachment issues, and to this extent the principle has been sanctioned that the laws of a State, for the purposes of attachment proceedings, may fix the situs of a debt at the domicile of the debtor: *Embree v. Hanna*, 5 Johns., 101; *Williams v. Ingersoll*, 89 N. Y. 508, 526."

Kansas City, Pittsburg and Gulf Railway Company v. Parker, 86 A. S. R., 205:

> "*Garnishment. Situs of debt for the purpose of garnishment is not only at the domicile of the* debtor, but in any State in which the garnishee may be found, provided the law of that State permits the debtor to be garnished, and the Court acquires jurisdiction over the garnishee through his voluntary appearance or actual service of process upon him within the State."

In this case the Court stated that the question was, "Can appellant, a citizen of Arkansas, garnish a foreign railroad corporation operating a railroad in this State, for a debt due one of its employees, for labor performed in the State of Arkansas, the employee being a citizen of Missouri?"

The Court answered the question as follows:

> "Professor Minor, in his recent work on Conflict of Laws, after stating and reviewing the various theories held upon this subject, states the true theory to be that the situs of a debt, for purposes of garnishment, is not only at the domi-

cile of the debtor, but in any State in which the garnishee may be found, provided the municipal law of that State permits the debtor to be garnished, and provided the court acquires jurisdiction over the garnishee through his voluntary appearance or actual service of process upon him within the State. We concur in this view. For a full discussion of the question, see Minor on Conflict of Laws, c. 10, p. 270. Waples on Debtor and Creditor, Situs of Debt, secs. 171, 176, 177, and authorities cited and reviewed therein; 14 Am. & Eng. Ency. of Law, 801, et seq., and cases cited."

The decision of the Supreme Court of South Carolina in the case of *Campbell v. Home Insurance Company*, 1 S. C., 158, is quite pertinent to the present inquiry.

In this case Campbell, a resident of South Carolina, sued the defendant Insurance Company for a fire loss sustained within South Carolina. The Insurance Company did not dispute the validity of the claim, but set up the fact that several plaintiffs, residents of New York State, had brought action in the Courts of New York State against Campbell, who had been served by publication in South Carolina, and that these plaintiffs had attached in the hands of the Insurance Company in New York State the insurance money due Campbell for the losses sustained in South Carolina; that these actions had gone to judgment in New York State and that the insurance money had been paid to these plaintiffs, and that the Insurance Company was entitled to credit for the amount so paid.

The Supreme Court of South Carolina, taking judicial cognizance of the existence of courts of general jurisdiction in New York State, upon the presentation of an exemplified copy of the proceedings therein and upon actually allowing parole testimony to supply certain defects in said proceeding upheld the contention of the Insurance Company and allowed as a deduction the amounts that it had paid to the plaintiffs in New York State as a result of the attachment proceeding therein had, in which Campbell was served, not personally, but by publication in South Carolina.

A sequel to this interesting case is that of *Mars v. Virginia Home Insurance Company,* 17 S. C., 514. The situation in the Mars case and the result was entirely similar to that of the Campbell case. In the Mars case a citizen of the State of South Carolina had gone to Virginia and brought an action against that other citizen of South Carolina who had sustained the fire loss and the validity of the Virginia proceeding in which the insurance money had been attached in Virginia was recognized by the Supreme Court of South Carolina.

In the more recent case of *Lafitte v. McNeal Marble Company,* a debt due a Georgia corporation by residents of South Carolina was successfully attached.

In passing, we ask to say that should it be contended that the executors of the Beidler estate, being residents of Illinois, could not enter the courts of the states of New York, Pennsylvania, Massachusetts, Maryland, Arkansas or Missouri to sue a South Carolina corpora-

tion (a doctrine which finds no basis in the showing made in the "record") such a position finds complete answer in the fact that an "ancillary administration" with a resident of the State in question acting as administrator c. t. a. could be taken out; or that the debt could be assigned to a resident of the State in question. Furthermore, and as a complete answer to any such contention, is the fact that it has been amply decided by the United States Supreme Court and by numerous other courts, that any rule or regulation of any court of any state or any statute, which would give one of its residents a right to sue under any set of circumstances and deny that same right to a non-resident of said state would be repugnant to Section 2 of Article IV of the Federal Constitution, which provides that citizens of each state are entitled to all privileges and immunities of the citizens of the several states. It has been definitely held that this section secures to citizens of one state the right to resort to the courts of another equally with the citizens of the latter state.

In re Clarendon Boat Oar Company, 257 U. S., 534.
Blake *v.* McClung, 172 U. S., 252.
Cole *v.* Cunningham, 133 U. S., 107.

This doctrine is fully enunciated by the Supreme Court of the United States in *Harris v. Balk, supra,* wherein the court held:

> "There can be no doubt that Balk, as a citizen of the State of North Carolina, had the right to sue Harris in Maryland to recover the debt which Harris owed him. Being a citizen of

> North Carolina, he was entitled to all the privileges and immunities of citizens of the several states, one of which is the right to institute actions in the courts of another state."

We then pass to a brief consideration of the laws of the various states in question which appear in the transcript and were offered in evidence before the Tax Commission, and we submit that in each of the states referred to the Beidler estate properly represented could maintain an action against the Santee Company, serving it by publication and attaching or garnishing the debt due it by the Brooklyn Cooperage Company or the American Sugar Refining Company, which in each instance are corporations doing business in the state referred to and have in all of said states been shown to possess abundant property to respond to the attachment.

It is further a fact that if jurisdiction of the Brooklyn Cooperage Company or the Sugar Refining Company can be secured in any of the states in question, that as is pointed out in the Fuller decision under the "full faith and credit" clause of the Federal Constitution, recourse could be had to property in other states if the property of said corporations in the particular state in question were not sufficient to satisfy the debt.

The New York State Law.

The provisions of the New York law are set out under Exhibit "C" (pp. 38-45) and Exhibit "O" (pp. 85-87). The latter exhibit and similar exhibits as to other states is an affidavit of a practicing attorney

of the state in question. Its admissibility is questioned by the Tax Commission. Its consideration, unless common law questions arise, or rather other matters than statutory matters, is not insisted upon, but at folio 34 appears the stipulation that any decisions or statutes cited in these affidavits are to be considered in evidence herein although they may not be embodied elsewhere in the transcript. These remarks refer to the laws of other states as well as New York.

Section 902 of the New York Civil Practice Act fully provides for the right of attachment in cases such as the Beidler estate would bring herein. Section 903 provides as a ground for attachment the fact that the action is against "a foreign corporation" such as the Santee Company would be. Section 916 covers fully such an attachment as the Beidler estate would make of the money arising out of the contract between the Brooklyn Company and the Sugar Refining Company and the Santee Company; it reads as follows:

> "The attachment may also be levied upon a cause of action arising upon contract; including a bond promissory note, or other instrument for the payment of money only, negotiable or otherwise, whether past due or yet to become due, executed by a foreign or domestic government, state, county, public officer, association, municipal or other corporation, or by a private person, either within or without the state; which belongs to the defendant and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby."

Turning to folio 109 in the transcript we find the construction of this statute by the Court of Appeals of New York, in *Edison Electric Company v. Guastavino, No. I,* 16 *App. Div.* 350, as follows:

> "By the express provision of Section 648, before cited, a levy of an attachment thereupon (viz: upon service of notice) is deemed a levy upon, and seizure and attachment of, the debt represented thereby. It is the debt that exists at the time of the service of the notice that is seized and levied upon. The fact that the debt is not payable at the time of the levy would not interfere with its being seized and levied upon by the sheriff upon the service of the warrant of attachment."

In Section 917, especially Subsection 3, the method of making the attachment is provided. In Section 922 the right of service upon the foreign corporation by publication is recognized.

The other sections quoted are administrative and fully sustain the right of attachment.

In the supplement to the transcript of record we set out in evidence fully the provisions of the New York law as to the publication of a summons.

The Massachusetts Law (pp. 45-51, 87-88).

In Massachusetts provisions are made for the usual attachment known to the South Carolina law and also to what is known as "trustee process." Section 90, Chapter 181 specifically provides that foreign corporations having property within the State shall be liable

to be sued and their property attached in the same manner as individuals.

Chapter 223 specifically provides that a transitory action may be brought against non-residents by "effectual attachment." Section 160 of said chapter provides for the issuance of the proper writ against defendant "to attach his goods or estate * * * or in an action commenced by trustee process to attach his goods or estate in his own hands and also in the hands of the trustee." Section 42 makes all property of every nature and kind (with a few immaterial exceptions) amenable to attachment.

Chapter 246 provides for the "trustee process" which would fully cover the remedy needed should the Beidler estate find it necessary to enter Massachusetts to collect its debt against the Santee Company in the hands of the Brooklyn Cooperage Company or the American Sugar Refining Company, both of which corporations, according to the affidavit of Mr. Cross herein, have and maintain places of business in Massachusetts.

In Section (1) it is provided that such an action "may be commenced by trustee process, and any person may be sued as the trustee of the defendant therein," with the proviso that as to a foreign corporation the trustees must have a usual place of business in the commonwealth. Section 20 provides that goods, effects, or credits of the main defendant in the hand of the party sued as his trustee may be reached by the process; and Section 24 specifically provides that this may be done even "before it has become payable."

Chapter 227 provides fully for the service of the main defendant by publication.

In *Bayer v. Lovelace,* 204 Mass., 327; 90 N. E., 538, both plaintiff and defendants were non-residents of Massachusetts and the garnishee—called "trustee" under Massachusetts practice—was a foreign corporation doing business in Massachusetts. It was held that the action would lie, the court saying (page 329):

> "The plaintiff, an inhabitant of another state, sued a non-resident partnership by trustee process, and summoned as trustee a foreign commonwealth, serving the writ on the commissioner of corporations under the authority of St. 1903, Ch. 437, Sec. 58. The trustee (garnishee) owed Krugel, one of the defendants, $2,000 upon an accepted order. The first question in the case is whether this debt could be attached effectively by a process of this kind.
>
> "The case falls exactly within that part of the R. L., Ch. 189, Sec. 1, which permits a foreign corporation to be summoned as a trustee of the defendant, if it has a place of business in the commonwealth of Massachusetts. Jurisdiction is thus obtained over the debt due a defendant, *and it matters not whether the plaintiff or defendant, either or both, are or are not inhabitants* of this Commonwealth. This is the doctrine which prevails generally, although not universally, in the Courts of this country, and

which is held by this Court and the Supreme Court of the United States."

Rothschild *v.* Knight, 176 Mass., 48.
Biggert *v.* Straub, 193 Mass., 77.
Chicago, Rock Island and Pacific Railroad *v.* Sturm, 174 U. S., 710.
King *v.* Cross, 175 U. S., 710.
Harris *v.* Balk, 198 U. S., 215.

"It is definitely decided that a judgment of this kind, charging a trustee, upon which he makes a payment, completely protects him, under the Constitution of the United States, against a suit by his creditor in another state."

Louisville and Nashville R. R. *v.* Deer, 200 U. S., 176.

"While in none of the cases are the facts exactly like those before us now, we think the principles and doctrines laid down in the cases above cited, when applied to the statute already referred to, fully cover the fundamental question in the present case." (See note in L. R. A., 1915-F, p. 880.)

Pennsylvania Law (pp. 51-54, 89-90).

Section (1) P. L., 1097 of the Pennsylvania Act provides specifically that the issuance of attachment against the personal property of a foreign corporation "in all actions *ex contractu.*" Section 48 provides the method of procedure, and Section 50 declares the effectiveness of a garnishment so made.

The decision of *Weiner v. American Insurance Company,* put in evidence at folios 68-69 of the transcript, holds specifically that a simple debt may be garnished;

and the case of *Day v. Zillerman*, 62 Pa., 72, set out at folio 114 of the transcript, shows that a debt which is not due may be attached in the same manner as one which is due.

The Pennsylvania statutes fail to make any specific provision for the service of process upon the defendant in foreign attachment proceedings, but the cases on the point, after expressed cognizance of this lack of statutory provision for such service, hold that service on the garnishee alone within the State is sufficient.

In *Glenny v. Boyd*, 26 Pa. Sup., 386, which was an action against the defendant by foreign attachment, in which service was had on the garnishees but the return was *nihil habet* as to the defendant, the court said:

> "A proceeding by foreign attachment is for certain purposes a proceeding *in rem*, and personal notice to the defendant is not required, since the action proceeds on the ground that actual notice can not be given.
>
> "* * * A plaintiff is entitled to judgment against a defendant in default of an appearance at the third term after the execution of the writ, but such a judgment binds only the interest of the defendant in the property attached. This appellant was entitled to a judgment against the defendant in default of an appearance, but that judgment bound only the property in the hands of the garnishees served in the original proceedings."

Again, in *Wolf v. Wolf*, 72 Pa. Sup., 91, we find the same opinion expressed:

"The party issuing a writ of attachment may direct the sheriff to serve both the defendant and the garnishee, but under the Act of 1901, he has his election to serve on the garnishee alone. The important service from the attaching creditor's standpoint is to stop funds in the hands of the garnishee, and this the legislature has said is all that is necessary to be done."

And in *Great Northern Moulding Co. v. The Philadelphia Picture Frame and Moulding Co.* (1910), 37 Pa., 210, at page 214, we find the following:

"The proceeding by foreign attachment is *ex parte* and statutory, and the provisions of the statutes must be strictly followed.

"In no part of any of the acts of assembly above referred to, nor in any other legislation upon the subject of foreign attachment, is any provision made for service of the writ on the defendant or to 'summon' the defendant by the Sheriff. The writ is not a summons to the defendant; it is an attachment of him by his goods and effects. And this manifestly for the reason that the proceeding is had upon the theory that the defendant, at the time of the issuing of the writ and execution thereof, is not within the jurisdiction of the court from which the writ issues, while his property is within the jurisdiction, and it is intended that such property may be held or taken in satisfaction of a debt due the plaintiff, who is within the jurisdiction."

In this same case the method of taking judgment in such cases is noted, the court saying:

> "There would appear to be no authority for taking judgment in case of foreign attachment for want of an affidavit of defense where no appearance has been entered for the defendant; but the proper procedure is to take judgment in such case for default of an appearance at or after the third term as provided in the Act of May 10, 1889. And after judgment is so taken, the damages should be assessed after the rule entered and evidence produced * * * or upon affidavit of the plaintiff or some other person cognizant of the transaction as provided by the Act of April 9, 1870."

The statute providing for judgment by default (Section 11029) is set out in the transcript of record at folio 69.

In *Wanamaker v. Stevens,* 18 Phila., 336 (S. C. Pa., C. C., 317), it was laid down that in foreign attachment the writ may be executed by serving a copy on the garnishee so as to bind a debt due by him to the defendant or goods of the defendant in the garnishee's hands; and also that the addition to the return of the Sheriff of *nihil habet* as to the defendant is not necessary.

Maryland Law. (See Supplement to Record, p. 132.)

The Maryland law upon the subject of attachment is fully set out in the supplement. Its validity and effect is fully discussed and upheld by the Supreme Court of the United States in *Harris v. Balk, supra.*

It provides full machinery for the attachment of the debt of the Cooperage Company and the Sugar Refining Company to the Santee Company, although the debt be not yet due. It is to be noted under the eighth section of said law that publication is not necessary. This section is referred to by the United States Supreme Court specifically in *Harris v. Balk.*

Missouri Law (pp. 55-56).

Section 1725 expressly provides that the plaintiff in any civil action is entitled to an attachment against property of the defendant "where defendant is a corporation whose chief office or place of business is out of this State."

Section 1846 provides that all debtors of the defendant may be summoned as garnishees and by Section 1871 it is specifically provided that debts not yet due to the defendant may be attached, but that no execution shall be awarded against the garnishee until the debt becomes due.

Other sections printed in the supplement to the case show the manner of obtaining service on the non-resident defendants so as to obtain judgment against him. The Missouri decisions make it quite clear that this remedy is available to non-resident plaintiffs as well as to residents.

In the early case of *Posey v. Buckner,* 3 Mo., 604, Posey, a non-resident of Missouri, brought an action of attachment against Buckner, also a non-resident, and the writ was served on one Davis as garnishee. It was argued that a non-resident could not avail him-

self of the remedy but the court held otherwise, saying (page 206):

> "No reason is seen why the writ of attachment should be restricted to residents. The first section of the Act of 1825, giving the remedy by attachment (See Digest, p. 144) gives it in all cases where any creditor or creditors shall file or cause to be filed, etc."

Again in *Graham v. Bradburg,* 70 Mo., 281, the court said:

> "The remedy by attachment is not confined to resident creditors."

In *Wyeth Hardware & Manufacturing Company v. H. F. Lang & Company,* 127 Mo., 242, the plaintiff and defendant were both residents of Missouri and it was sought to enjoin the defendant from prosecuting suits against plaintiff in Kansas and there garnishing debts due to it. A demurrer to the petition was sustained, and on writ of error, such judgment was affirmed by the Kansas City Court of Appeals. The case being certified to the Supreme Court of Missouri, that Court adopted the opinion of the Court of Appeals, in which it was said, at page 246:

> "It has been ruled in effect that a debt without reference to where payable is deemed attached to the person of the owner so as to have its *situs* at his domicile, yet this fiction always yields to laws for attaching the property of a non-resident, because such laws necessarily assume that the property has a *situs* distinct from the owner's domicile. Wherever the creditor

might maintain a suit to recover the debt there it may be attached as his property, provided the laws of such place authorize it."

The case of *Baisley v. Baisley,* 113 Mo., 545, involved an attachment suit in which both parties were residents of Oregon, and it was held that non-residence was no bar to the action, the Court saying:

> "The fourth clause of Section 2009, R. S., 1889, provides that 'When all the defendants are non-residents of the State, suit may be brought in any county in this State.' It will be observed that this clause is without limitation or restriction.
>
> "Suits, then, that is, *all suits,* whether by proceedings *in rem* or *in personam,* are allowed to be brought in any county in this State against a non-resident, and the mere fact of the party's non-residence, without more, is one of the grounds for an attachment. (Ibid., Sec. 521.) From an early day in this State it has been ruled that one non-resident may sue another by attachment in this State, *Posey v. Buckner,* 3 Mo., 604; *Graham v. Bradbury,* 7 Mo., 281; though the statute concerning attachments contains no mention of non-residents as suitors in our Courts."
>
> *Posey v. Buckner, supra,* is cited also in *Snowden v. McDaniel,* 7 Mo., 314, and in *New England Loan & Trust Co. v. Brown,* 59 Mo., App. 466, where the right of a non resident to sue in attachment is recognized, providing bond for costs is furnished.

In *Howland v. Chicago, Rock Island & Pacific Ry. Co.*, 134 Mo., 474, the Court cited the Wyeth *v.* Lang case, *supra,* and said:

> "In *Wyeth v. Lang,* we approved the ruling * * * * wherein it was held that debts have no *situs,* but may be attached in any State other than that in which the debtor is resident. 54 Mo., App., 147."

The question sometimes raised as to whether garnishment may be had upon a non-resident or upon a foreign corporation has been expressly passed upon in Missouri in favor of the jurisdiction.

In *McAlvister v. Pennsylvania Insurance Co.,* 28 Mo., 214, a Pennsylvania corporation, doing business in Missouri, was served as a garnishee; the Court said:

> "We are not aware of any principle of public policy which could induce the legislature designedly to discriminate between domestic insurance companies and these agencies of foreign insurance companies, which they have allowed to transact business herewith all the privileges of domestic corporations, so as to exempt the latter from liability to a process to which the former is undoubtedly liable. There is no more inconvenience in requiring a debt, confessedly due, to be paid over to a creditor of their creditor in the one case than in the other."

Arkansas Law (pp. 57-58).

Section 494 specifically authorizes attachment against a foreign corporation.

Section 503 provides for garnishment whenever the plaintiff shall have reason to believe that any person is indebted to the defendant.

Section 502 provides for executing the order of attachment by delivering a copy of the order to the person owing the debt or demand.

Sections 1159 and 1162 provide for constructive service against a non-resident or foreign corporation and Sections 6261 and following show the method of entering judgment on such constructive service.

That a foreign corporation doing business in Arkansas may be served, as a garnishee, has been expressly held in the case of *Kansas City, Pittsburgh & Gulf Ry. Co. v. Parker,* 69 Arkansas, 401, already cited. To the same effect is *St. Louis South Western Ry. Co. v. Vanderberg,* 91 Ark., 251.

Dunnegan v. Byers, 17 Ark., 492, expressly decides that a garnishee may be summoned even though the debt due from him to the principal defendant is not yet due and that such fact merely entitled the garnishee to a stay of execution until the debt matures.

Publication Statutes.

Inasmuch as, in the compilation as set out in the original record, the statutes of New York, Maryland, Missouri and Arkansas, as to service of a non-resident defendant, in case of attachment of his property within such State, and the statutes as to taking judgment in such cases, had been omitted, such statutes are fully set out in the supplement (pp. 129-138).

It may be added generally that if the attachment or garnishment against the Brooklyn Company or the Sugar Refining Company would be valid in any one State and should go to judgment therein against said corporations as garnishees that the judgment so rendered is a *personal judgment* against such garnishees to the extent of the debt it owes the Santee Company. Should it happen that there were not in the State in question sufficient property to answer the *personal judgment* so rendered, it is fully established by the *Fuller decision* by the South Carolina Supreme Court that under the "full faith and credit" section of the Federal Constitution, the personal judgment against the garnishee so rendered would be recognized and enforced by appropriate proceedings, in any other State in which the garnishees, the Brooklyn Company and the Sugar Refining Company, own property. This situation is not to be confused with the doctrine of *Pennoyer v. Neff* (95 U. S.), to the effect that the judgment obtained in foreign attachment or garnishment suit against the *original creditors* (the Santee Company herein) is valid only to the extent of property seized. The distinction is that in the case of the original debtor who is not served *within the State of the action,* the judgment is merely *in rem,* whereas as to the garnishee who is served in such State, the judgment is *in personam.*

That the judgment against the garnishee is personal, is fully established by the following language of the Supreme Court of the United States in *Harris v. Balk, supra:*

"Where money or credits are attached the inchoate lien attaches to the fund or credits when the attachment is laid in the hands of the garnishee, and the judgment condemning the amount in his hands *becomes a personal judgment against him.*"

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM

No. ~~30~~ 42

FRANCIS BEIDLER, II, AND GEORGE ENGELKING,
AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF
FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION,
DEFENDANT IN ERROR

Argument in Reply Submitted by Counsel for Plaintiffs in Error.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Attorneys for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM

No. 39

FRANCIS BEIDLER, II, AND GEORGE ENGELKING,
AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF
FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION,
DEFENDANT IN ERROR

Argument in Reply Submitted by Counsel for Plaintiffs in Error.

We desire to call especial attention to the fact that counsels' argument commits them definitely to the contention that the Blackstone decision establishes the doctrine that in every case of a decedent creditor domiciled in one state and a debtor domiciled in a second state that Inheritance Taxation (given the necessary legislation) will automatically follow in both states. We have shown definitely that the highest Courts of New York, Massachusetts, Minnesota and South Carolina have ruled to the contrary.

We further specificially call attention to the fact that the Supreme Court of South Carolina ruled to the contrary in the Beidler decision. At p. 108 of Record, the Court said,—"If the case falls within the rule announced in the Fuller case, there can be no doubt of the correctness of appellants contention." Then after much argument they conclude (p. 10) that in the Beidler case *"resort to the Courts and laws of South Carolina was inevitable."*

Liverpool Ins. Co. vs. Assessors, 221 U. S. 346

This decision along with the Blackstone decision is counsel's chief reliance. We submit to the contrary that it fully supports our contention that there can be no tax in the state of the debtor *unless special circumstances are present to justify the tax*. In the Liverpool case we find that the property taxed were credits arising out of business done and completed in Louisiana, and that (221 U. S. p. 349) *"said credits are due in this state."* Reference to 122 Louisiana 98 confirms this fact. The credits taxed were due to be paid in Louisiana by residents of that state. Hence they could reasonably be collected nowhere else. With these facts before it this Court said:

> "The legal fiction, expressed in the maxim *mobilia sequuntur personam*, yields to the fact of *actual control* elsewhere. And in the case of credits, though intangible, *arising as did those in the present instance*, the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile."

Again this case was primarily a business situs case for the Court was careful to rule,—

> "We are not dealing here merely with a single credit or a series of separate credits, *but with a business*. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employed *a local agent* to conduct that business."

The other cases cited by counsel simply quote the Blackstone decision to the general effect as stated in the Baker case, 243 U. S. 394-401, that "the state of the debtors domicile may impose a succession tax"; meaning of course, we submit, when the circumstances of the given case justify it.

Replying to other points made, we submit,

(1) Counsel submits that if the tax is not allowed in this case that there would be a case of no tax even in the State of creditor's domicile, in a supposed instance of a deceased creditor and a debtor, both residents of South Carolina, if the administrator of the decedent resorted to the Courts of North Carolina to collect the debt. We submit that this situation could never arise because under Blodgett vs. Silberman there will always be a tax in the deceased creditor's state. Her succession laws are of necessity resorted to in order to transfer for title to the debt from the dead to the living.

(2) Counsel next refers to the case of corporations maintaining transfer offices in other states. His illustration is probably likewise fallacious because in the Baker case, supra, this Court has recognized the fact that the laws of the state which has created a corporation always control the transfer of her stock.

(3) Counsel contends that the coming into this state of the Beidler Executors to pay the tax on the stock and to contest the payment of the tax on the debt amounted to the taking out of ancillary letters in South Carolina and subjects the estate to the tax.

We submit that this contention presents a complete disregard of the whole theory of Inheritance Tax Laws. The tax is earned in the creditors state only if resort must be had to her laws or Courts to complete the devolution of the title of the property from the dead to the living, *or to collect the debt.* If counsels position were otherwise sound; even applying for

ancillary letters by the state or by the Beidler Estate for purposes other than the collection of the debt or some such kindred purpose, would not confer the tax.

Besides this the Record (p. 2) shows that the Beidler Estate involuntarily filed the affidavit *required of them* and specifically claimed therein "that the two items" of debt "were not taxable. A special appearance only was made.

Illinois adheres to rule of Wilkins vs. Ellett.

It is definitely ruled in Hickox vs. Frank, 102 Ill. 660 and in Ramsay vs Ramsay, 97 Ill. App. 270, that a Domiciliary Executor in Illinois has title to all the property of a decedent wherever physically situated and specifically that such domiciliary executor has title in Illinois to a debt due to the decedent by a resident of another state. This is in line with the majority rule established by this Court in Wilkins vs. Ellett and is diametrically opposed to the doctrine adhered to by the South Carolina Courts.

Hence upon Mr. Beidler's death his Executors had title in Illinois to the debt due by the Santee Company, which had been advanced from Mr. Beidler's office in Chicago and was being repaid thereto. Neither these executors nor the heirs needed the aid of the South Carolina Courts to confer title upon them.

Respectfully submitted,

ARTHUR B. SCHAFFNER,

P. F. HENDERSON,

HENDERSONS & SALLEY,

Attorneys for Plaintiffs in Error.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 39 & 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

SUPPLEMENTARY ARGUMENT OF P. F. HENDERSON AND HENDERSONS & SALLEY FOR PLAINTIFFS' IN ERROR.

Mr. Justice Brandeis asked a question, during the argument herein, to which we ask to be allowed to put our answer in concrete form.

He cited the fact that under the garnishment or attachment laws a debt might be impounded in the hands of the debtor at his domicile, and suggested that this fact proved that the debt was therefore *property* in the State of the domicile of the debtor, and that this was a

sufficient reason for allowing an inheritance tax in that State.

We answer by supposing that the debtor were a corporation doing business in, say, ten States and owning sufficient property in each to pay the debt, certainly it could not be said that each of these States could impose the tax upon the creditor's death. Or, in Balk *vs.* Harris, 198 U. S., 215, it was held that the debt due by a resident of North Carolina might be attached in Maryland while he was casually in that State. Surely in case the creditor died, each State which the debtor might visit could not claim an inheritance tax. Again, in the Balk case this Court made it perfectly plain that what is impounded in attachment proceedings is not property, in the taxable sense of the word, but merely the debtor's obligation to pay. Said the Court:

> "We do not see the materiality of the expression 'situs of the debt,' when used in connection *with attachment proceedings.* * * * The obligation of the debtor to pay his debt *clings to and accompanies him wherever he goes.* He is as much bound to pay his debt in a foreign State when therein sued * * * as he was in the State in which the debt was contracted." (Italics added.)

What is impounded, we submit, is not property, but the obligtion to pay, and it may be impounded in many States. Surely all of these States could not levy the tax.

Hence we earnestly submit that the true rule involved in the Blackstone case is that there can be no inheritance tax in any State other than the domicile of the creditor, unless that other State can affirmatively show that her laws alone are necessarily involved in the transfer. This rule alone squares with the Gordon, the Bliss, the Chadwick, and the Fuller decisions.

Respectfully submitted,

P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Plaintiffs in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

ARGUMENT UPON REARGUMENT OF ARTHUR B. SCHAFFNER, OF CHICAGO, ILLINOIS, AND OF P. F. HENDERSON, AND OF HENDERSONS AND SALLEY, OF AIKEN, SOUTH CAROLINA, FOR PLAINTIFFS IN ERROR.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSON & SALLEY,
Counsel for Plaintiffs in Error.

INDEX.

Subject Index.

	Page
Brief for plaintiffs in error on reargument:	
Statement of facts	3
Argument	6
The new rule as to the taxation of intangibles	8
1. The Connecticut case (Blodgett v. Silberman)	8
2. The Minnesota case (Farmers Loan & Trust Company v. Minnesota)	9
3. The Missouri case (Baldwin v. Missouri)	11
The business situs question	13

Table of Cases Cited.

Baldwin v. Missouri, 74 Law Ed., 593; 281 U. S., 586	7, 11
Blackstone v. Miller, 180 U. S., 189	6, 9, 10
Blodgett v. Silberman, 277 U. S., 1	3, 7, 8
Farmers Loan & Trust Company v. Minnesota, 280 U. S., 204	7, 9
Frick v. Pennsylvania, 268 U. S., 473	3
Liverpool Insurance Co. v. Board of Assessors, 221 U. S., 346	14
Rhode Island Hospital Trust Co. v. Doughton, 270 U. S., 69	3, 12
Safe Deposit and Trust Co. v. Virginia, 74 L. Ed., 76	3, 13
Union Refrigerator Transit Co. v. Kentucky, 191 U. S., 194	7

Other Authorities Cited.

Cooley on Taxation (4th Ed.), Sec. 466	14
Inheritance Tax Act of the State of South Carolina, Laws of 1922, p. 800	2
Illinois Statutes, 1927, p. 747	5
36 S. C. Stat., 226, February 28, 1929	5
U. S. C., Title 28, Sec. 344	2

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

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BRIEF FOR PLAINTIFFS IN ERROR.

The judgment of the Supreme Court of South Carolina, here sought to be reviewed, was entered on May 27, 1927. The opinion of the court below (R. 93-113)

has not been officially reported. A petition for rehearing was seasonably filed and order entered denying the same on September 26, 1927 (R. 113). The petition for writ of error (R. 118) and assignments of error (R. 115) were duly presented to the Chief Justice of the State of South Carolina and writ of error allowed by him (R. 124-125) on December 19, 1927. The judgment in question affirmed the action of the South Carolina Tax Commission imposing an inheritance tax upon plaintiffs in error.

Jurisdiction exists in this Court because said judgment was a final judgment in a suit in the highest court of the State of South Carolina in which a decision in the suit could be had, where was drawn in question the validity of the Inheritance Tax Act of the State of South Carolina (approved February 23, 1922, Laws of 1922, page 800) on the ground of its being repugnant to the Constitution of the United States, and especially to the Fourteenth Amendment thereof, and the decision of the Supreme Court of South Carolina was in favor of such validity.

U. S. C., Title 28, Sec. 344.

The statute, as construed and applied by the Supreme Court of South Carolina, levied an inheritance tax on the transfer of a debt due by a South Carolina corporation to the decedent, Francis Beidler, a resident of Illinois, and thereby deprived plaintiffs in error, as his executors, of property without due process of law, because said debt, plaintiffs in error submit, had a taxable *situs* only in Illinois and was under the Constitution of the United States and the Fourteenth

Amendment thereof taxable only in Illinois and not in South Carolina. This presents a question within the jurisdiction of this Court.

Frick *v.* Pennsylvania, 268 U. S. 473.

Rhode Island Hospital Trust Company *v.* Doughton, 270 U. S. 69.

Safe Deposit and Trust Co. *v.* Virginia, 74 L. Ed. 76, 78.

Objection to the tax on this specific ground was made before the Tax Commission (R. 7) in the exceptions taken on the appeal to the Supreme Court of South Carolina (R. 90) and by the assignments of error herein, especially the first, second, third, fourth, fifth, twelfth, and thirteenth thereof (R. 115-117).

Writ of error is the proper method of review.

Blodgett *v.* Silberman, 277 U. S. 1.

Statement of Facts.

Francis Beidler, a resident of Chicago, Illinois, died there on March 4, 1924 (R. 1). By his will (R. 8), which was duly admitted to probate in the Probate Court of Cook County, Illinois, he nominated the plaintiffs in error as executors and letters testamentary were issued to them as such executors on January 28, 1925 (R. 112).

At the time of Mr. Beidler's death he owned 8,000 shares of the capital stock of the Santee River Cypress Lumber Company, a South Carolina corporation. Mr. Beidler had also made large advances to this company. A complete statement of these advances and of payments made thereon by the company appears

on pages 139 to 150 of the transcript of record. The advances began in the year 1907 and continued at frequent intervals until December, 1920. Thereafter there was only one advance of $5,000.00, on December 2, 1922. From time to time payments were made by the company to Mr. Beidler on account of these advances. These payments were, however, infrequent before the year 1921 and up to that time the account in general was growing, so that at the end of the year 1920 the company owed Mr. Beidler a total of $1,043,562.00. Beginning with January 10, 1921, all the items on the account, except the advance of $5,000.00 in December, 1922, already mentioned, are credits, so that at the time of his death this account had been reduced to the sum of $556,864.22. These advances were ordinarily made by a deposit to the credit of the company in a Chicago bank. The account was an open, unsecured book account, the only evidences thereof being the entries upon the books of Mr. Beidler in Chicago and the corresponding entries on the books of the corporation in South Carolina. In addition to the advances above mentioned, the company was also indebted to Mr. Beidler at the time of his death in the sum of $64,672 for dividends declared but not yet paid.

By agreement between the Tax Commission and the executors the 8,000 shares of stock of the Santee Company were valued at $204.00 per share, or $1,632,000.00. The executors did not contest the levying of a tax upon this stock, but specifically claimed that the indebtedness, both that for advances and that for divi-

dends (R. 6, 7), was not taxable. The Tax Commission, however, overruled this claim and held that the personal estate taxable in South Carolina amounted to a total of $2,253,536.22 and levied an inheritance tax upon this amount, the total tax imposed amounting to $144,106.10 (R. 3). From this judgment of the Tax Commission an appeal was duly taken under the laws of South Carolina to the Supreme Court, which is the highest court of the State. From the judgment of the Supreme Court affirming the assessment of the Tax Commission as to the taxability of the indebtedness this writ of error is sued on.

The Beidler estate was assessed and paid an inheritance tax upon this same debt to the State of Mr. Beidler's domicile—Illinois (R. 63-4).

It is to be noted that at the time of the death of Mr. Beidler the State of South Carolina had not enacted a Reciprocal Exemption Act as to inheritance taxes. Such an Act was passed on the 28th day of February, 1929 (36 S. C. Stat. 226). Said Act fully provides that in the case of a decedent who was a non-resident of the State of South Carolina, but was a resident of a State which likewise has a reciprocal provision in its Act, that no inheritance tax on intangible personal property shall be collected in the State of South Carolina against such estate. This Act did not go into effect until the first day of January, 1930. The Illinois statute carried a reciprocal clause (State of Ill., 1927, p. 747). While the South Carolina Reciprocal Exemption Statute may not govern the Beidler case, still it is a fact that the decision of this Court in this case will not regulate nor interfere with the future tax

policy of the State of South Carolina, but will only decide the specific case before it, as no tax would have been assessed against the Beidler estate had Mr. Beidler died after the first of January, 1930.

ARGUMENT.

The situation presented then to the Court by the facts herein is that the State of South Carolina, acting under its Inheritance Tax Statute, has undertaken to levy an inheritance tax of approximately $65,000.00 upon an open, unsecured debt of approximately $620,000.00 due by a South Carolina corporation to Francis Beidler, who at the time of his death and always was a resident and citizen of Illinois. Mr. Beidler's estate paid an inheritance tax on the debt to the State of his domicile—Illinois. The Supreme Court of South Carolina held the levy of a second inheritance tax in South Carolina, the domicile of the debtor, to be legal. This is the issue herein. The plaintiffs in error submit, to the contrary, that the only taxable *situs* of the debt was in Illinois, and that South Carolina had no power to tax it.

In its decision, rendered more than three years ago, the Supreme Court of South Carolina relied implicitly upon the decision of this Court in Blackstone *v.* Miller, 180 U. S. 189, which it characterized as "the case which really determines this appeal" (R. 97). Since this decision of the Supreme Court of South Carolina was rendered, this Court has, however, handed down a series of notable decisions, which have expressly overruled Blackstone *v.* Miller and the old rule therein established twenty-seven years ago, and have firmly,

we submit, established a new general rule.

This Court some years ago, in such cases as Union Refrigerator Transit Company *v.* Kentucky, 191 U. S. 194, and Frick *v.* Pennsylvania, 268 U. S. 473, had determined as to tangibles that they could be taxed only where they had a physical *situs,* and could be taxed in but one State. The new rule recently established by this Court, in the series of decisions mentioned, has extended this rule specifically to intangibles. To quote the language of the Court in one of the new decisions referred to (the Minnesota case hereinafter set out), said new rule is as follows:

> *"In general intangibles may be properly taxed at the domicile of their owner and * * * are entitled to enjoy an immunity against taxation at more than one place, similar to that accorded to tangibles."*

Of course, the Supreme Court of South Carolina did not have the benefit of this series of important decisions, so recently rendered, or the benefit of the new rule therein promulgated, or its decision would doubtless have been otherwise.

These cases (only one of which had been decided when this case was first argued before this Court) are:

The Connecticut Case (Blodgett *v.* Silberman, 72 Law Ed. 749, 277 U. S. 1).

The Minnesota Case (Farmers Loan & Trust Company, Executor, *v.* State of Minnesota, 74 Law Ed., decided January 6, 1930).

The Missouri Case (Thomas A. Baldwin *v.* State of Missouri, 74 Law Ed. 593, decided May 26, 1930).

We shall content ourselves, upon the reargument of this matter, with a brief review of these decisions and a reference to another matter.

The New Rule as to the Taxation of Intangibles.

Under the old rule, enunciated in Blackstone *v.* Miller, double inheritance taxation upon an intangible was possible under certain circumstances, which circumstances need not now be considered in detail. Under the new rule established by the decisions to be reviewed, we submit that but one inheritance tax may be levied upon an intangible, and that only at the domicile of its owner—Illinois in this case. We ask to take up these cases in their chronological order:

(1) *The Connecticut Case (Blodgett v. Silberman).*

In the Connecticut case, which was but the precursor of the others in the series, it was held that the State of Connecticut might levy an inheritance tax, it being the State of the domicile of the decedent, upon the value of a partnership existing solely in New York State, and upon the value of bonds and certificates of the United States which were physically kept on deposit in New York. The Court said:

> "At common law the maxim '*mobilia sequuntur personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to

> whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

The Court left open in the Blodgett case, decided in 1928, the vital question in which we are interested in the present case, namely, that of whether intangibles might also be taxed in the State in which they were physically kept, or in which the creditor resided, the Court saying:

> "Further, this principle is not to be shaken by the inquiry into the question whether the transfer of such intangibles, like specialties, bonds or promissory notes, is subject to taxation in another jurisdiction. As to that we need not inquire. It is not the issue in this case. For present purposes it suffices that intangible personalty has such a *situs* at the domicile of its owner that its transfer on his death may be taxed there."

(2) *The Minnesota Case (Farmers Loan & Trust Company v. State of Minnesota).*

In this case this Court definitely overruled Blackstone *v.* Miller and definitely promulgated the new rule.

The facts were that Henry R. Taylor died domiciled and residing in New York. "He had long owned and kept within that State negotiable bonds and cer-

tificates of indebtedness issued by the State of Minnesota and cities of Minneapolis and St. Paul worth about three hundred thousand dollars." Minnesota claimed an inheritance tax upon the old theory of Blackstone *v.* Miller, that the debtor, the maker of the bonds, was within her jurisdiction and under the coercive power of her laws. This Court first swept Blackstone *v.* Miller aside, saying:

> "Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. Blackstone *v.* Miller no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding, it is definitely overruled."

The Court then went on to elaborate, stating the new rule as follows:

> "While debts have no actual territorial situs we have ruled that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the creditor's domicile for taxation purposes. Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the State where they are found. And, we think, *the general reasons declared sufficient to inhibit taxation of them by two States apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction.* Primitive conditions have passed; business is now transacted on a national scale. A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive

taxation, is a matter of the greatest moment. Twenty-four years ago Union Refrig. Transit Co. *v.* Kentucky, supra, declared—'In view of the enormous increase of such property (tangible personalty) since the construction of railways and the growth of manufacturers, the tendency has been in recent years to treat it as having a situs of its own for the purpose of taxation and correlatively to exempt it at the domicile of the owner.' And, certainly, existing conditions no less imperatively demand protection of choses in action against multiplied taxation whether following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contributions. For many years the trend of decisions here has been in that direction.

"Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. *We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles.* The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota." (Italics added.)

(3) *The Missouri Case* (*Baldwin v. Missouri*).

The final decision in the series dealt with a decedent who resided in Illinois and who had two or more bank

accounts in the State of Missouri and who had sundry promissory notes secured *by mortgages on Missouri real estate, which notes and mortgages were actually physically kept in* Missouri." The Supreme Court, on the 26th day of May, 1930, ruled:

> "We find nothing to exempt the effort to tax the transfer of the deposits in Missouri banks from the principle applied in Farmers Loan & T. Co. *v.* Minnesota, supra. So far as disclosed by the record the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere.
>
> "The bonds and notes, *although physically within Missouri*, under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living and there this transfer was actually taxed. *As they were not within Missouri for taxation purposes the transfer* was not subject to her power. Rhode Island Hospital Trust Co. *v.* Doughton, 270 U. S. 69, 70 L. Ed. 475, 43 A. L. R. 1374, 46 Sup. Ct. Rep. 256." (Italics added.)

We submit that the Beidler case squares absolutely with the new rule.

We have here a mere open book account due by a corporation of South Carolina to an Illinois decedent—*the plainest type of an intangible imaginable.* There is not herein even the existence of a note, nor a bond, nor of a security deed or mortgage which might be kept possibly in a third State to complicate the mat-

ter. The existence of such evidences, indeed, no longer becloud the issue, although they once added perplexity. But in the Beidler case they simply do not exist. Mr. Beidler kept a complete set of books in Chicago, which alone were the controlling evidence of the debt.

We submit that the only taxable *situs* of the debt was in Illinois, in which State, the record shows, a large inheritance tax was levied and paid. To allow South Carolina now to levy a tax would be to visit another tax upon the same transfer, which, as we understand it, is contrary to the new rule.

It is proper to note that during November, 1929, this Court, in Safe Deposit & Trust Company *v.* Virginia, 74 L. Ed. 76, held, in general accord with the decisions herein reviewed, that securities owned outright by a trustee in Maryland were not subject to a property tax at the domicile of the beneficiary in Virginia, upon the general ground that as said securities were certainly taxable in Maryland as the domicile of the trustee, that they should not be subjected to double taxation by allowing another tax in Virginia. This decision as against double taxation is entirely in line with cases hereinbefore reviewed.

The Business Situs Question.

In the recent decisions, this Court left for future consideration, in a proper case, this question.

Although the Supreme Court of South Carolina indicated that it thought that the debt herein had acquired a business *situs* in South Carolina, counsel for the State in their brief upon the former argument of this cause did not claim that the debt due Mr. Beidler

had such a *situs*. If any such claim be now made we respectfully refer the Court to our former argument (pp. 59-69), wherein the question is fully discussed and the authorities collated.

This feature of the matter is fully covered by the language of the present Chief Justice (then Mr. Justice Hughes) in the leading case on this subject, in which the existence of a business *situs* was sustained (Liverpool Insurance Company *v.* Board of Assessors, 221 U. S. 346, 356) as follows:

> "We are not dealing here *with a single credit or a series of separate credits, but with a business.* The insurance company chose to enter *into the business of lending money within the State of Louisiana, and employed a local agent to conduct* that business." (Italics added.)

In the Beidler case no *business* of lending existed. Mr. Beidler owned a controlling interest in the South Carolina debtor corporation and advanced it money from time to time, which it repaid in part from time to time. At most there was "*a series of separate credits*", not a business.

The loan was made from Chicago. There was no lending agent in South Carolina. There was no feature, such as existed in the case cited (and in most cases of this subject), of making a business of lending money, collecting it in, and lending it again to a new set of borrowers. The case falls far short, we submit, of what has always been considered by this Court to be necessary to establish a taxable business *situs*. See Cooley on Taxation (4th Ed.), Sec. 466.

Further, it is a fact that these advances (R. 139-150) had practically ceased in 1920, more than three

years before Mr. Beidler's death. At the close of 1920 the company owed him $1,043,000.00. Payments were made from time to time, so that at his death the amount due had been reduced to $556,864.22. The only advance made by him after 1920 was one of $5,000.00, in December, 1922. If lending to a single debtor, and that one a company which he controlled, could in any event constitute the doing of business by Mr. Beidler in South Carolina, that business had ceased long before his death.

But the reason actually assigned by the Supreme Court of South Carolina for thinking that the debt in question had acquired a business *situs* in South Carolina was (R. 101), to quote the court's decision, that:

> "Both the debt and dividend were involved in the assets of Santee River Cypress Lumber Company; *they were a part of its working capital* and were no doubt left with the debtor company (in which Mr. Beidler was vitally interested and which he and his family owned in toto), *to help and assist it along in its business.* He was tremendously interested in the affairs of the large and extensive corporation, and was no doubt cheerfully willing to leave these two large amounts invested here *to help make dividends for the company.*" (Italics added.)

In reply to this reasoning, we wish to say simply that the debt to Mr. Beidler was really a liability of the Santee River Cypress Company (to be deducted in considering the value of her stock) and not an asset; but if, as the South Carolina Supreme Court seemed to think, the fact that Mr. Beidler's money was allowed to remain with the company increased the

company's efficiency, if it served "to help and assist it along in its business," if it served "to make dividends for the company," if, in short, it increased the worth of the company, and hence the value of Mr. Beidler's stock in some indefinite and unascertained manner and amount, then this fact would be reflected in the value of the stock in Mr. Beidler's hands when he died and in the property taxation assessed by the State of South Carolina against the Santee Company. The records show (R. pages 2-5) that the State of South Carolina has collected an inheritance tax from the Beidler estate of more than $70,000 upon the value of Mr. Beidler's stock in the Santee Company, it being valued at $204 per share (par value $100). And, of course, the company has paid property taxes to the State from year to year.

Especially, we submit that the implied reasoning of the South Carolina court that, because the money in question might be in an indefinite way *"working"* for the Santee River Cypress Lumber Company, the debtor, presents no logical basis whatever for assessing double inheritance taxation against the creditor's estate, but could affect only (if at all) the taxation of the debtor corporation.

All of which is respectfully submitted.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSON & SALLEY,
Counsel for Plaintiffs in Error.

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Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No .2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

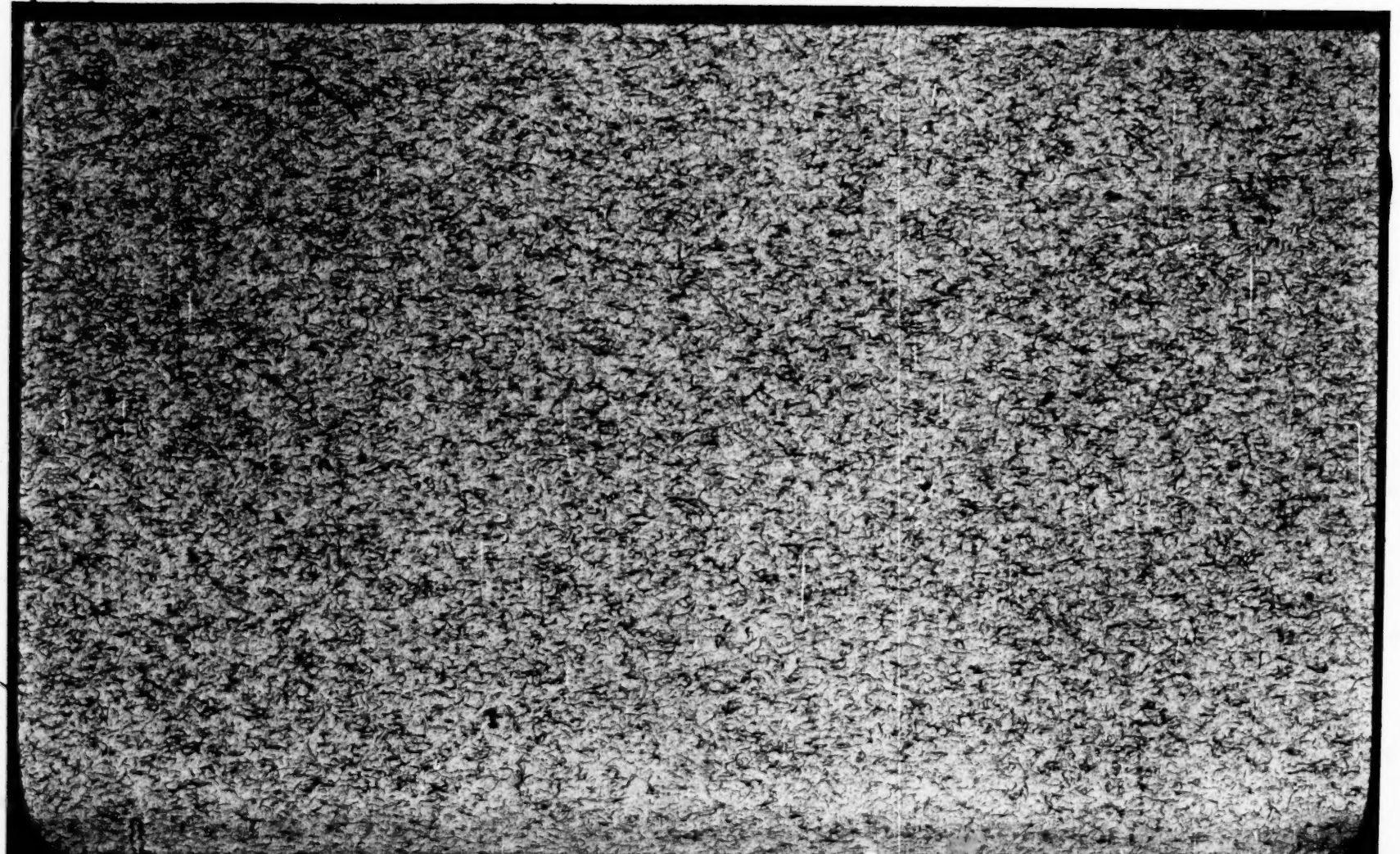
vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

REPLY ARGUMENT UPON REARGUMENT OF ARTHUR B. SCHAFFNER, OF CHICAGO, ILLINOIS, AND OF P. F. HENDERSON AND OF HENDERSONS & SALLEY, OF AIKEN, SOUTH CAROLINA, FOR PLAINTIFFS IN ERROR.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Plaintiffs in Error.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

ARGUMENT IN REPLY.

Counsel for defendant in error makes three principal claims in his argument to which we ask to reply briefly in their order.

First Claim.

To the position that "the debtor may be compelled to pay" within South Carolina, and the position that

"Illinois, the decedent's domicile, has no jurisdiction of the thing, the debt and the dividend, until the laws of South Carolina are satisfied and the debt and dividend delivered to the executor for distribution under the Will," we reply,

(*a*) That the facts stated are not pertinent under the present rule so solemnly and recently announced by this Court in the Minnesota case and in the Missouri case, to govern the taxation of intangibles, and,

(*b*) Under any rule, in this particular case, the records show that the laws of South Carolina need never be resorted to in order to collect the debt herein. If there were resistance, which is inconceivable in this case, the debt could be collected in Massachusetts, New York, Pennsylvania, Maryland, Arkansas or Missouri. Under the decisions of this Court in Ellett *vs.* Wilkins, 9 Wall, 782, 108 U. S. 156, title to the debt vested in Mr. Beidler's domiciliary executor absolutely, immediately upon his qualification as executor. (See our former argument, pp. 43-52.) The reference in the Frick case, if applicable at all, is applicable only to corporate stocks, and is certainly not applicable to a debt to which the rule announced in Ellett *vs.* Wilkins applies.

Second Claim.

To the remarkable claim that a business situs is created because counsel claims that "the deceased in conjunction with his corporation in South Carolina, was *carrying on his Personal Business,* which in business effect was not separate from the business of the

corporation"; that "he apparently *distributed gratuities* from the corporation's assets"; that "when he desired to show a philanthropic spirit it was done by using corporate funds," and that "under the laws of South Carolina he was enabled to do this * * *. He has enjoyed the *immunities and privileges* given him by the laws of South Carolina, having chosen this State as the place for conducting said business, both corporate and personal,"—to this claim, we ask to reply,

(*a*) In the first place the account in the record does not bear out counsel's claim. The account shows that Mr. Beidler and the Santee Company were dealing in reality on a strictly financial basis. He was an officer of the company. He made frequent—practically monthly—trips, evidently to South Carolina, at a cost of seventy to seventy-five dollars a trip. When he made such trips for his company he charged his expenses to it. He charged them interest repeatedly for money he had furnished the company. He even charged (pp. 146) the company fifty-five cents for postage stamps and sixty-one cents for a telegram. On the credit side of the account we even find (p. 148) on November 30, 1912, that when Mrs. Beidler spent a day or so at the company's plant at Santee in South Carolina, that Mr. Beidler was charged (or credited the company) $7.88 therefor. Certainly the claim that the relationship between Mr. Beidler and the Santee Company was that (as counsel claims) he "paid its debts, it paid his debts" is unfounded. And the Supreme Court of South Carolina did not so hold, and the pres-

ent argument is a distinct departure from that Court's holding.

But the cornerstone of counsel's present argument is the claim that Mr. Beidler "*distributed gratuities from the corporation's assets,*" meaning that *he gave to the University of Chicago,* the sum of $648,153.48 represented by four items appearing on pp. 143 and 146 of the record, and charged the same against his company.

Nothing is further from the truth and nothing is further from a logical deduction from the record.

The record shows at p. 146 that the fourth item of the dealing with the University of Chicago was a *loan,* not a gratuity. And the matter is absolutely cleared up by a consideration of paragraph (*j*) of Mr. Beidler's Will (R. 12-13) from which the true situation appears, namely: that when Mr. Beidler executed his Will in 1923, he actually owed a balance of "*One Hundred and Fifty Thousand Dollars* ($150,000.00) * * * *to the University of Chicago, secured by mortgage upon my real estate.*"

In other words, the record fully establishes the truth, namely: that Mr. Beidler borrowed from the funds (evidently from the great endowment fund) of the University of Chicago more than a half a million dollars, mortgaged his own real estate to secure it, and in turn lent the money to the Santee Company in South Carolina. The loan to him from the University of Chicago, which enabled him to advance the half a million or more dollars to the Santee Company had been made in 1915, and then was evidently secured by

a mortgage of his real estate. Evidently in the intervening eight years he had repaid to the University all but $150,000, during which time the Santee Company had in turn repaid him at least $475,000, as the Record shows (pp. 149-150). Evidently Mr. Beidler repaid the University as the Santee Company repaid him.

The existing record clearly establishes these facts.

In passing we note the fact that counsel for the State quote decisions to the general effect that he who attacks the constitutionality of a State statute, assumes the burden of showing that fact clearly. But attention is drawn to the fact that in the Missouri case (74 L. Ed. 593) in which this very question of the presence or absence of a business situs was involved, the absence in the record of a showing that there was a business situs, brought about a reversal. In the instant case, this point is, we submit, negligible. The record here reveals the real facts.

(*b*) A further conclusive and immediate answer to this position is, we submit, that even if Mr. Beidler were conducting his business in South Carolina through the corporation, that this supplies no basis whatsoever for claiming that the resultant debt, which was due him at the time of his death, has acquired a business situs in South Carolina for the purpose of inheritance taxation. No Court has ever so held. Counsel cites no authority to that effect. A business situs as to a fund of money has repeatedly been applied only where there has been a business of lending and relending that fund of money, done within the

State claiming the tax, by the lender or by a resident agent therein.

Liverpool Insurance Company *vs.* Board of Assessors, 221 U. S. 346-356.

Cooley on Taxation, 4 Ed., Section 466.

New Orleans *vs.* Stempel, 175 U. S. 309.

Bristol *vs.* Washington County, 177 U. S. 133.

Metropolitan Life Insurance Company *vs.* New Orleans, 205 U. S. 395.

(*c*) The present attempt is to tax a debt due to Mr. Beidler. The present proposal is not to tax Mr. Beidler's Estate or the Santee Company for alleged and fanciful "immunities and privileges" enjoyed by him in South Carolina through the corporation. If the latter existed (and there is no basis for so imagining) they have been fully paid for when the State of South Carolina collected undoubtedly the incorporation tax, the annual license tax, and the annual property tax exacted by its laws, as well as the inheritance tax which Mr. Beidler's Estate has paid to the State of South Carolina on the value of the stock.

The debt which now remains due to Mr. Beidler's Estate has no relation to these matters.

Third Claim.

To the final claim that if either Illinois or South Carolina is to be denied the tax, that South Carolina should be favored, we ask to say simply, that (certainly unless there be a well-defined business situs, which does not exist herein) this Court has definitely decided in the Minnesota case and in the Missouri case that Illinois is definitely, as the State of Mr. Beidler's

domicile, entitled to the tax, and that double taxation of the kind proposed is not to be tolerated. And we would add finally that the Virginia case cited by counsel is not authority for the idea that the fiction of mobilia sequuntur personam will ever yield *to allow double taxation.* If it ever yields the Court held in the Virginia case that it would yield only *to prevent double taxation.*

The True Rule Upon the Question of the Business Situs.

It is submitted that in a proper case in which a business situs actually exists (which we submit does not exist in this case) that then a uniform rule should be laid down to the effect that nevertheless but a single inheritance tax should be collected, and that should be collected in the State of the domicile of the creditor; and that the collection of inheritance taxes should not be made to depend upon the fortuitous circumstances of each individual case.

This general question is fully covered and is discussed, from his own standpoint, in a brief filed herein by Hon. Seth T. Cole, Tax Commissioner of the State of New York as amicus curiæ, to which brief we ask the Court's attention as in our behalf.

All of which is respectfully submitted.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Attorneys for Appellants.

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Supreme Court of the United States

OCTOBER TERM, 1928

No. 82

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

versus

SOUTH CAROLINA TAX COMMISSION, DEFENDANT IN ERROR

BRIEF FOR DEFENDANT IN ERROR

JOHN M. DANIEL,
ATTORNEY GENERAL,

J. FRASER LYON,
COUNSEL FOR DEFENDANTS IN ERROR.

The R. L. Bryan Co., Law Printers, Columbia, S. C.
10-11-28-50

Supreme Court of the United States

OCTOBER TERM, 1928

No. 39

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

versus

SOUTH CAROLINA TAX COMMISSION, DEFENDANT IN ERROR

BRIEF FOR DEFENDANT IN ERROR

INDEX

PAGE

STATEMENT 3

ARGUMENT 4

Remedies for the Collection of the Debt in Other States Does not Affect the Right of South Carolina to Tax 5

The Executors Have not Title to the Debts Until they Have Complied with the Laws of South Carolina 7

APPENDIX 12

STATEMENT

Francis Beidler at the time of his death and for some years prior thereto, was a resident of the State of Illinois.

Santee River Cypress Lumber Company is a corporation organized under the laws of South Carolina and, at the times mentioned in this controversy, doing business exclusively within the State of South Carolina. Its properties are entirely within the State of South Carolina and consist mainly of real estate. At the time of the death of Francis Beidler this corporation owed him on account of moneys loaned $556,864.22 and on account of dividends theretofore declared but not paid amounting to $64,672.00. The money was loaned by Francis Beidler at various times beginning with the year 1907 and ending with the year 1922, and during this same period various credits were made thereon, leaving the above-mentioned balance due at the time of death. The various debts and credits are evidenced only by entries on the books of Santee River Cypress Lumber Company at its home office in South Carolina. R(2). Mr. Beidler also kept a set of personal books in Chicago, upon which appeared entries of the amounts due him. R(2) R(139–150). A majority of the stock of the corporation was owned by Francis Beidler at the time of his death. The balance was owned by his wife and two children, beneficiaries under his will. R(1–2). The deceased having owned a majority of the stock of the corporation, his executors are now in complete control of the corporatin.

South Carolina Tax Commission levied an inheritance or transfer tax upon all of the above-mentioned assets, property having its taxable situs within the State. At the time of the death of Mr. Beidler, Brooklyn Cooperage Company, a New York corporation, was indebted to Santee River Cypress Lumber Company, payable at stated intervals, an amount in excess of the debts due by the Santee River Cypress Lumber Company to Mr. Beidler. The Brooklyn Cooperage Company

also owned properties in several states other than South Carolina in excess of the debt due by Santee River Cypress Lumber Company to Mr. Beidler, the deceased.

ARGUMENT

South Carolina has powr to tax by way of inheritance or succession the debt owed by the domestic corporation to Mr. Beidler, a resident of Illinois.

> "Power over the person of a debtor confers jurisdiction, we repeat, and this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death."
>
> *Blackstone v. Miller,* 188 U. S., 189.

The rule as laid down in the case of *Blackstone v. Miller* has been followed and reaffirmed by this Court in many subsequent cases:

> "And in the case of credits, though intangible, arising as did those in the present instance, the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile. The debt, of course, is not property in the hands of the debtor, but it is an obligation of the debtor and is of value to the creditor because he may be compelled to pay and power over the debtor at his domicile is control of the ordinary means of enforcement."
>
> *Liverpool Insurance Company v. Board of Assessors,* 31 Sup. C. R., 553; 221 U. S., 346.

Also in the cases of:

McGuire v. Trefry, 253 U. S., 12.
Maxwell v. Bugbee, 250 U. S., 525.

Bullen v. Wisconsin, 240 U. S., 625.
Metropolitan Insurance Company v. New Orleans, 205 U. S., 395.
Baker v. Baker-Eccles Company, 242 U. S., 394.

Remedies for the Collection of the Debt in Other States Does not affect the Right of South Carolina to Tax

Plaintiff in error asserts that because certain extraordinary remedies may be resorted to in other jurisdictions than South Carolina to enforce payment of the debts in question, that, therefore, South Carolina may not levy tax thereon. It will be noted that the executors in this case by reason of their holding a majority of the stock in Santee River Cypress Lumber Company control that corporation, besides three of the beneficiaries own almost half of the stock independently of the will. The corporation so controlled needs only to wait proper time for payment by the Brooklyn Cooperage Company on its contract, and if resort should be had to extraordinary remedies in other States to collect the debt it would only be to add expense to administration and solely for the purpose of evading payment of the inheritance tax in this State. The ordinary means of enforcing payment of this debt would be suit by executors against the corporation, but the executors have control of the corporation and such suit would be tantamount to suing themselves.

If the true test be that resort is necessary to be had to the Courts of the foreign State (domicile of the debtor) to enforce the collection of the debt or a transfer of the intangible, then, we submit, that even stocks of perhaps many domestic corporations of South Carolina could be lawfully transferred in the State of New York without resort to the Courts in South Carolina. It is perhaps well known that many corporations throughout the United States have transfer offices and keep their books in New York and Boston and perhaps other large cities and that a legal transfer of stocks could be en-

forced in those States without resort to the Courts of South Carolina or the other States where such corporation may be chartered outside of Massachusetts or New York.

If, therefore, the Santee River Cypress Lumber Company had transfer offices and kept its stock books in New York or Chicago the transfer of stocks could be compelled in the Courts of those States and resort to the Courts of South Carolina in such case would be unnecessary. We do not think that in such case South Carolina or any other State should be prevented from laying an inheritance tax on such intangibles by reason of such fortuitous facts.

To illustrate further: B is indebted to A, both residents of South Carolina. Upon the death of A, administration is had in North Carolina. The administrator in North Carolina finds that C owes to B certain debts or that B has certain properties in North Carolina that may be subjected to the payment of the debt. The administrator may either attach the debt that C owes B to satisfy the debt of B to A or he may proceed directly against the property of B found within the State of North Carolina and have the debt due to A fully satisfied. In such case resort to the Courts of South Carolina in any way would be unnecessary. If the test be that resort to the Courts of this State must be the only means of enforcing payment, then we may have a case where both debtor and creditor live in South Carolina yet no tax may be charged. There has doubtless been a failure to distinguish between the law of the State which gives life and force to the contract and the law which permits Courts of other States to enforce the contract in case jurisdiction may be had of either person or property.

It is the law of South Carolina that gives life and binding effect to the obligation to pay the debt in this case and that law must be invoked wheresoever the collection of the debt may be enforced.

The Executors Have not Title to the Debts Until They Have Complied with the Laws of South Carolina

"To this end, therefore, it is well understood that the different governments in which the movable property of a deceased may be left, upon his death, are authorized to intervene and take control. Hence, in every State, we find laws declaring in whom such property, within its limits, shall vest, and in what manner it shall be administered. True, if the decedent has left a will or testament, upon such testament being established under the *lex domicilii,* it will usually be confirmed under the jurisdiction where the property is found. And the title of the executor, as well as the disposition of the property therein appointed and directed, will be recognized there. But this confirmation must take place and be had in accordance with the laws of the *rei sitae* before even an executor under such testament can intermeddle with the property."

Dial v. Gary, 14 S. C., 573.

Reaffirmed in *Merchants National Bank v. South Carolina Tax Commission,* 121 S. E., 142.

This is a general rule recognized by many States: *Executors and Administrators,* 11 R. C. L., Sections 535 and 536. And cases cited in *Beidler et al. v. South Carolina Tax Commission* herein, R., 103–105.

Besides, Section 19 of the Act forbids the corporation to transfer the debt without notice to the Tax Commission and retention of a sufficient amount of money to pay the tax. Section 19, see appendix.

It is no doubt true that there must be some property or right to property within the jurisdiction to justify either ancillary or original administration.

The debt and the dividend owed by the Santee Company to the deceased was sufficient to give this State jurisdiction to appoint an administrator who could have lawfully taken charge of the stock upon which the tax has been paid in this case and enforce payment of the debt and the dividend in the Courts of this State.

The coming into this State of the executors appointed by the Illinois Court, exercising the rights and privileges accorded them by Section 20 of the Inheritance Tax Act, was tantamount to taking out ancillary letters in this State. Section 20, see appendix. For the purpose of collecting this tax the last above-mentioned section grants to foreign fiduciaries the privilege of coming into this State and settling their inheritance tax liabilities with the Tax Commission without proceedings of any kind in a Court of this State. Section 15 of the Act also provides:

> "If, upon the decease of a person leaving an estate, a will disposing of such estate is not offered for probate, and an executor or administrator *cum testamento annexo* appointed, or an application for administration and the appointment of an administrator made within four months after such decease, the proper Probate Court, upon application by the South Carolina Tax Commission, shall appoint an administrator. . . . . "
>
> Acts South Carolina, 1924, page 911.

Such administrator appointed upon application of the Tax Commission would unquestionably have the right to sue in the Courts of this State and enforce payment of the debt. The Legislature evidently desired to aid foreign executors and administrators to settle and pay the tax imposed with as little Court proceedings as possible and gave to them and to the South Carolina Tax Commission power to settle, pay and collect the tax with as little delay and annoyance as possible.

In a case like this we earnestly insist that it would have been unreasonable for the South Carolina Tax Commission to have applied for administration and thereby put the estate to needless expense and delay instead of settling the tax in the manner permitted by Statute. If, however, it be the law that an administrator must be appointed by a Court of this State and actually take charge of the property within this State, including debts and dividends, in order to collect this tax then hereafter the South Carolina Tax Commission will not undertake to assess and collect the tax from foreign fiduciaries as it is permitted under the Statute to do, but will, as the Statute also provides, apply to the proper Probate Court of this State for the appointment of an administrator to administer the estate and pay the tax.

We are confident that the debt and the dividend owed by the South Carolina corporation to Francis Beidler, aside from the stock holdings, was sufficient upon which to found administration in this State and that giving to the executors of Mr. Beidler, appointed in Illinois, power in this State to settle the tax without application to the Courts of this State is the equivalent of taking out ancillary letters testamentary, or the appointment of an administrator in this State and of such executor or administrator for the purpose of settling the tax, taking charge of all the assets of the deceased which were found within the State of South Carolina. In other words, the executors in this case appointed in Illinois have already come into South Carolina and exercised the privileges accorded them under the laws of the State, which privilege was accorded in lieu of their taking out ancillary letters.

If, however, it be held that actual administration in South Carolina is necessary for the collection of the tax on the debts in question then it is urged that the South Carolina Tax Commission be given sufficient time in which to have an administrator appointed and the estate administered in the usual manner.

The Blodgett-Silberman case:

Plaintiff in error cites and relies upon the case of *Blodgett v. Silberman*, decided by this Court April 16, 1928, as reversing the doctrine laid down in the case of *Blackstone v. Miller*, in which latter case it is held: "Power over the person of the debtor confers jurisdiction, we repeat. . . . " In the case of *Blackstone v. Miller* the State of New York was sustained by this Court in laying an inheritance or succession tax upon intangibles in that State owned by a non-resident, the exact facts existing in the case at present before the Court.

In *Blodgett v. Silberman* it was decided that the State of Connecticut could tax intangibles having their situs in New York belonging to a resident of Connecticut and reaffirmed the decision in the *Frick case* that it was beyond the power of the domiciliary State to tax tangible personalty located in another State. We feel so assured that it is so certain that intangible property located outside the domiciliary State may be taxed by the State of domicile under the legal fiction of *mobilia sequuntur personam* and that this intangible personalty may also be taxed in the foreign State where located, that no citation of authority is necessary. The fiction *mobilia sequuntur personam* is resorted to when the State of domicile imposes the tax on intangibles located in another State, and that fiction gives way to fact when the State of the actual situs taxes the same property.

Plaintiff in error states (Brief, page 68):

> " . . . In so far as the proceeds the loans in question were money for property in the State of South Carolina the value thereof was reflected in the assets of the Santee Company upon which the State levied its property tax year by year. . . . "

For the purpose of this argument, this much of the statement is conceded, but the statement to the effect that the value

of these loans was reflected in the stock of the Santee Company upon the transfer and that it has been taxed as a part of the value of the stock is incredible. Throughout this litigation nothing has been suggested that the Tax Commission failed to deduct any debt owed by the Santee Company for the purpose of ascertaining the value of the stock for this tax. The debts owed by the Santee Company to Mr. Beidler, like all other debts, were deducted from the assets before counsel agreed upon the valuation of the stock of $204.00 per share, and we think it will not be assumed that the Tax Commission did not take this indebtedness into consideration or that learned counsel for plaintiff in error overlooked so large an item affecting this tax until the preparation of their argument for this Court. Perhaps, however, it is only a failure to distinguish between value of assets and stock value.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General,

J. FRASER LYON,
Counsel for Defendants in Error.

APPENDIX

SECTIONS 15, 19, AND 20 OF THE SOUTH CAROLINA INHERITANCE TAX ACT WHICH HAVE BEEN REFERRED TO HEREIN.

§ 15. Derelict Estate—Duty of Probate Judge.

Section 15. If upon the decease of a person leaving an estate, a will disposing of such estate is not offered for probate, and an executor or administrator *cum testamento annexo* appointed, or an application for administration and the appointment of an administrator made within four months after such decease, the proper Probate Court, upon application by the South Carolina Tax Commission, shall appoint an Administrator. And if it shall come to the knowledge of a Probate Judge that any person within his jurisdiction has died leaving an estate upon which no application has been made for letters of administration, and no administrator appointed, or no will offered for probate or letters testamentary issued, he shall, immediately after the lapse of four months from the death of such person, notify the South Carolina Tax Commission thereof together with his opinion as to whether or not any part of said estate is likely to be taxable.

§ 19. Delivery or Transfer of Securities by Corporations and Fiduciaries.

Section 19. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the State Treasurer on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control, securities, deposits or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to or

standing in the joint name of such decedent and one or more persons, including the shares of the capital stock, of, or other interest in, the safe deposit company, trust company, corporation, bank, or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint name of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the South Carolina Tax Commission at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities or deposits or other assets belonging to or standing in the name of a decedent, or belonging to or standing in the joint name of a decedent and one or more persons, including the shares of the capital stock, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or trans fer of such securities, deposits or other assets, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this Act, unless the South Carolina Tax Commission consent thereto in writing. And it shall be lawful for the South Carolina Tax Commission personally or by representatives, to examine said securities, deposits, or assets at the time of such delivery or transfer. Failure to serve such notice, or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest, as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person, or persons liable to the payment of the amount of the tax and

interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank, or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars and the payment of such tax and interest thereon or of the penalty above prescribed, or both, may be enforced in an action brought by the South Carolina Tax Commission in any Court of competent jurisdiction: *Provided,* The South Carolina Tax Commission, upon good cause shown, may, in their discretion, remit the said penalty in whole or in part.

§ 20. In the Absence of Administration in This State Upon the Estate of a Non-Resident.

In the absence of administration in this State upon the estate of a non-resident, the South Carolina Tax Commission may, at the request of an executor or administrator duly appointed and qualified in the State of the decedent's domicile, or at the request of a devisee, legatee, distributee, or of the grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished it by such executor, administrator, devisee, legatee, distributee or grantee or otherwise, determine whether or not any estate of said decedent within the State is subject to tax under the provisions of this Act, and if so, may determine the amount of such tax and adjust the same with such executor, administrator, devisee, legatee, distributee, grantee or other legal representative, and for that purpose may appoint an appraiser to appraise said property as provided in Section 13, and the expense of such appraisal shall be a charge upon the said estate in addition to the tax. The South Carolina Tax Commission's certificate as to the amount of such tax and the State Treasurer's receipt for the amount therein certified may be filed in the Probate Court ha[illegible]isdiction, and when so filed shall be conclu-

sive evidence of the payment of the tax to the extent of the certification, as provided in Section 16. Whenever in such a case the tax is not adjusted within four months after the death of the decedent, the proper Probate Court, upon application of the South Carolina Tax Commission, shall appoint an administrator in this State as provided in Section 15.

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No. 2

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Supreme Court of the United States

OCTOBER TERM—1930

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER,

Plaintiffs in Error,

vs.

SOUTH CAROLINA TAX COMMISSION,

Defendant in Error.

REARGUMENT FOR DEFENDANT IN ERROR

JOHN M. DANIEL, Attorney General,
J. FRASER LYON,

Counsel for Defendant in Error.

THE STATE CO., COLUMBIA, S. C.

Supreme Court of the United States

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Counsel for Defendant in Error.

The defendant in error resubmits for the consideration of the Court the brief first filed in this case and asks the Court to reaffirm the rule laid down in the case of *Blackstone vs. Miller,* 188 U. S., 89.

We are unable to offer any more forceful reasons for the Court reaffirming the principles laid down in the above cited case than those found in the dissenting opinions of the Justices of this Court in the case of *Baldwin vs. Missouri,* decided May 26, 1930.

It is very serious to the State to have its power to tax diminished, especially when new and greater demands are being made by the public upon its treasury. The best minds are exercised to find sources from which revenues may be raised for schools, good roads, for the care of the insane, the sick, and the innumerable other matters and things demanded of a civilized state. Standing alone, such considerations should, perhaps, have no weight in interpreting the Constitution. But when such matters are very seriously pressing and there is a substantial doubt as to the State not having power in this respect, the doubt should be resolved in favor of the State to tax, Unless there is a clear and positive inhibition to exact this tax, it is urged that such a necessary and fundamental need of the State should not be denied.

It is said in *Baldwin vs. Missouri* that the succession takes place in the state of domicile. We suggest that no succession takes place until the property is reduced to possession in the state where located, in the state the laws of which give vitality to the contract and will compel payment of the debt—the domicile of the debtor.

> "The general rule of law is well settled that for the purpose of founding administration, all simple contract debts, are assets at the domicile of the debtor; and that the locality of such a debt for this purpose is not affected by a bill of exchange or promissory note having been given for it, because the bill or note does not alter the nature of the debt, but is merely evidence of it, and therefore the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable. *Yeomans v. Bradshaw,* Carth 373; S. C. Comb. 392; Holt, 42; 3 Salk. 70, 164; Abinger, C. B., in *Atty. Gen. v. Bouwens,* 4 M. & W. 171, 191; S. C. 1 Horn & Hurl 319, 324, Parke, B. in *Mondel v. Steele,* 1 Dowl. (N. S.) 155, 157; *Slocum v. Sanford,* 2 Conn. 533; *Chapman v. Fish,* 6 Hill, 554; *Owen v. Miller* 10 Ohio St. 136; *Pinney v. McGregory,* 102 Mass. 186."
>
> *Wyman v. U. S.* 3 Sup. Ct. Rep. 418; 109 U. S., 654.

In *Frick vs. Penn.* 268 U. S., 473; 45 Sup. Ct. Rep., 603, it is said that the state of domicile of deceased may not by way of succession tax art collections and other tangible personalty located in another state. The Court, referring to both property and succession taxes, said:

> "But to impose either tax, the state must both property and succession taxes), the state must have jurisdiction over the thing that is taxed and to impose either without such jurisdiction, is mere extortion and in contravention of due process of law. Here the tax was imposed on the transfer of tangible personalty having an actual situs in other states—New York and Massachusetts. This property, by reason of its character and situs, was wholly under the jurisdiction of those States and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that State, nor subtracted anything from the jurisdiction of New York and Massachusetts."

The business situs of the debt and dividends in this case is in South Carolina and under its jurisdiction. The tax may be enforced in this State, the debtor may be compelled to pay within this State and the proceeds of the debt may not be distributed until creditors are satisfied in this State in preference to others; the Statute creates a lien upon this property to secure the payment of the tax. Illinois, decedent's domicile, has no jurisdiction of the thing, the debt and the dividend, until the laws of South Carolina are satisfied and the debt and dividend delivered to the executors for distribution under the will, which is given force and effect in South Carolina in accordance with the law of the State.

> "The decedent owned many stocks in corporations of states, other than Pennsylvania, which subjected their transfer on death to a tax and prescribed means of enforcement which practically gave those states the status of lienors in possession. As those states had created the corporations issuing the stocks, they had power to impose the tax and to enforce it by such means, irrespective of the decedent's domicile,

and the actual situs of the stock certificates. Pennsylvania's jurisdiction over the stocks necessarily was subordinate to that power. Therefore to bring them into the administration in that state it was essential that the tax be paid. The executors paid it out of moneys forming part of the estate in Pennsylvania and the stocks were thereby brought into the administration there. We think it plain that such value as the stocks had in excess of the tax is all that could be regarded as within the range of Pennsylvania's taxing power. Estate of Henry Miller, 184 Cal. 674, 683. 195 P. 413, 16 A. L. R. 694. So much of the value as was required to release the superior claim of the other states was quite beyond Pennsylvania's control. Thus the inclusion of the full value in the computation on which that state based its tax, without any deduction for the tax paid to the other states, was nothing short of applying that state's taxing power to what was not within its range."

Frick vs. Pa., 45 Sup. Ct. Rep. pg. 607; 268 U. S., 473.

It is noted that the ruling opinion in *Baldwin vs. Missouri* contains the following language: "The records disclose nothing tending to show that the personal property had been given a business situs in that state." It is assumed that if a business situs had been shown in the State of Missouri, the decision in that case would have been in favor of the state. Assuming this to be the law, the Court is requested to scrutinize the statement of the account appearing on pages 139 to 150 of the transcript of record.

From this account it appears that the deceased, in conjunction with his corporation in South Carolina, was carrying on his personal business, which in business effect was not separate from the business of the corporation. Deceased owned and controlled the corporation, loaned it money, paid its debts, it paid his debts, he apparently distributed gratuities from the corporation's assets, charged personal expenses and paid incidental matters from the corporate funds which would seem to have no relation to the business of the corporation. In other words,

this account shows that the deceased drew no distinction between the affairs of the corporation and his own individual private business. The apparent gifts to the University of Chicago, page 143, is a striking example of this. Nearly one-half million dollars were turned over by the corporation to that University and the amount was debited on the account of Mr. Beidler.

It is apparent that when the corporation was in need of money, the deceased furnished it; when the deceased was in need of money, the corporation furnished it; that he charged various traveling, incidental expenses, interest, etc., to the corporation and when he desired to show a philanthropic spirit, it was done by using corporate funds. It is not intended to suggest any moral wrong when attention is called to the nature of the financial transactions of the deceased with the corporations, but simply to show that he regarded the corporation as belonging to him, and that the various amounts of money decedent loaned it and charged against it was nothing more that his personal private affairs necessary to the conduct of his business within the State of South Carolina. The deceased invested his money in his own business in South Carolina; he disbursed it, save the balance due from the South Carolina corporation, by paying debts of his corporation, charging various and sundry accounts against it and making large gratuities. Under the laws of South Carolina he was enabled to do this, certainly not under the laws of Illinois; so far as these transactions are concerned, he has enjoyed the immunities and privileges given him by the laws of South Carolina; having chosen this State as his place for conducting such business, both corporate and personal.

If either South Carolina or Illinois should be denied the right to tax in this case, we urge that it is but fair and, as it occurs to us, in accordance with natural justice that this debt and dividend held, managed and controlled, and in part earned in South Carolina, and given vitality and the power to enforce payment by the laws of South

Carolina, should be required to contribute to the support of the government of this state, regardless of the domicile of the owner.

> "Ordinarily this Court recognizes that the fiction of *mobilia sequuntur personam* may be applied in order to determine the situs of intangible personal property for taxation. *Blodgett v. Silberman,* 277 U. S. 1, 48 S. Ct. 410, 72 L. Ed. 749. But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere, and ought not to be applied if so to do would result in inescapable and patent injustice whether through double taxation, or otherwise."

Safe Deposit & Trust Co. v. Commonwealth of Va; 280 U. S. 83; 50 Sup. Ct. Rep., 60.

> "In assailing the constitutionality of a state statute, the burden rests upon appellant to establish that it infringes the constitutional guarantee which he invokes. If the State Court has not otherwise construed it, and it is susceptible of an interpretation which conforms to constitutional requirements, doubts must be resolved in favor of, and not against, the state."

Toombs v. Citizens Bank of Waynesboro, 281 U. S. 643; 50 Sup. Ct. Rep., 434.

> "It was incumbent upon the appellee in invoking the protection of the Fourteenth Amendment to show with convincing clarity that the law of the state created against him the discrimination of which he complained. An infraction of the constitutional provision is not to be assumed. On the contrary, it is to be presumed that the state in enforcing its local policies will conform its requirements to the Federal guaranties. Doubts on this point are to be resolved in favor of, and not against, the state."

Corporation Com. of Okla., et al. vs. Lowe, 281 U. S., 431; 50 Sup. Ct. Rep., 399.

The South Carolina Supreme Court in its opinion in this case held:

> "The claims in question, the debts due by the Santee Company to Beidler's estate, are not bonds or other securities having possibly a local situs at the domicile of the creditor, but are assets of the decedent's estate, with an established local situs at the domicile of the debtor, subject to ancillary administration there * * * * *."

Transcript of Record, Pg. 109.

Respectfully submitted:

JOHN M. DANIEL, Attorney General,
J. FRASER LYON,

Counsel for Defendant in Error.



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IN THE

Supreme Court of the United States

OF AMERICA.

OCTOBER TERM, 1930—No. 2.

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Last Will and Testament of FRANCIS BEIDLER, *Plaintiffs-in-Error,*

vs.

SOUTH CAROLINA TAX COMMISSION, *Defendant-in-Error.*

MOTION ON BEHALF OF THE TAX COMMISSION OF THE STATE OF NEW YORK FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF.

SETH T. COLE, ESQ.,
Counsel for Amici Curiæ.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

INDEX.

	Page
Motion for leave to file brief as amici curiae	1
Statement	2
Argument	3

CASES CITED.

Baldwin v. Missouri, 281 U. S. 586	4
Blackstone v. Miller, 188 U. S. 189	4
Blodgett v. Silberman, 277 U. S. 1	6–12
Equitable Trust Company of New York v. Kentucky State Tax Commission, U. S. Daily, September 29, 1930	15
Farmers Loan and Trust Co. v. Minnesota, 280 U. S. 204	3
Frick v. Pennsylvania, 268 U. S. 473	12
Keeney v. New York, 222 U. S. 525	12
Matter of Swift, 137 N. Y. 77	12
Plummer v. Coler, 178 U. S. 115	14
Rhode Island Hospital Trust Company v. Doughton, 270 U. S. 69	9

OTHER CITATIONS.

New York Times, January 19, 1930, Section 3, page 5, column 4	10
Proceedings National Tax Association, 1929, pp. 200-226	6
Report of New York State Bar Association, Vol. XLVIII, pp. 242-245	9
Reports of New York State Bar Association, Vols. XLIX, L, LI, LII and LIII	10
Reports of Proceedings of National Conferences on Inheritance and Estate Taxation held at Washington, D. C., February 19-20, 1925, and New Orleans, La., November, 1925	8

IN THE

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vs.
SOUTH CAROLINA TAX COMMISSION,
Defendant-in-Error.

Motion on Behalf of the Tax Commission of the State of New York for Leave to File Brief as *Amici Curiae.*

COME NOW, Thomas M. Lynch, John J. Merrill and Mark Graves, constituting the Tax Commission of the State of New York, and move this Honorable Court for leave to file the annexed brief as *amici curiæ.*

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IN THE
SUPREME COURT OF THE UNITED STATES
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OCTOBER TERM, 1930—No. 2.

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Last Will and Testament of FRANCIS BEIDLER,
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vs.
SOUTH CAROLINA TAX COMMISSION,
Defendant-in-Error.

BRIEF ON BEHALF OF THE TAX COMMISSION OF THE STATE OF NEW YORK AS *AMICI CURIAE.*

Statement.

This cause presents the question whether the state of domicile of a corporation has power to impose an inheritance or transfer tax upon debts owing by said corporation to a decedent who at the time of his death was domiciled in another state, such debts being moneys due said de-

cedent on account of loans and on account of dividends declared by the corporation prior to the decedent's death but then unpaid.

The state of domicile of the corporation was South Carolina, and the state of domicile of the decedent was Illinois.

It is asserted that the State of South Carolina has the power to tax these debts under principles enunciated by this Court in the case of *Blackstone v. Miller*, 188 U. S. 189, and also because said debts have a business situs in South Carolina.

This brief is filed on behalf of the Tax Commission of the State of New York because it is interested in the establishment and maintenance of a sound and logical system of death taxation not alone in the State of New York but throughout the United States. It is the thought of said Commission that the present is a crucial period in the development of death taxation in this country and that a false step may make it impossible for the states to retain the death tax as a source of substantial revenue.

IT IS CONTRARY TO THE DUE PROCESS OF LAW PROVISION OF THE CONSTITUTION OF THE UNITED STATES FOR A STATE OTHER THAN THAT OF THE DOMICILE OF A DECEDENT TO IMPOSE A DEATH TAX UPON ANY OF THE INTANGIBLE PERSONAL PROPERTY OWNED BY SUCH DECEDENT.

In *Farmers' Loan and Trust Co. v. Minnesota*, 280 U. S. 204, this Court, in a broad and sweeping decision, gave

recognition to the abuses which had developed in the death tax field, sanctioned to some extent by its former decisions, and, abandoning the old landmarks, set a new course in keeping with the spirit and thought of the times. In so doing, it placed the case of *Blackstone v. Miller,* 188 U. S. 189, and many others on the *Index Expurgatorius* (see Mr. Justice Holmes' opinion in *Baldwin v. Missouri,* 281 U. S. 586).

It is believed that this Court has definitely taken the position that double or multiple taxation of transfers at death is prohibited by the Fourteenth Amendment. Indeed, in the Minnesota case, in the opinion of Mr. Justice McReynolds, it was said:

> "*Blackstone v. Miller, supra,* and certain approving opinions, lend support to the doctrine that ordinarily choses in action are subject to taxation both at the debtor's domicile and at the domicile of the creditor; that two states may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the 14th Amendment. The inevitable tendency of that view is to disturb good relations among the states and produce the kind of discontent expected to subside after establishment of the Union. The Federalist, No. VII. The practical effect of it has been bad; perhaps two-thirds of the states have endeavored to avoid the evil by resort to reciprocal exemption laws. It has been stoutly assailed on principle. *Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable.*" (Italics supplied.)

It is, of course, conceivable that this Court might limit the Minnesota case, and the subsequent case of *Baldwin v. Missouri,* 281 U. S. 586, *supra,* to the specific facts with which they were directly concerned, and hold that under different sets of facts, or in respect to intangibles of a

different character, double or multiple death taxation is not prohibited, but a careful study of these cases affords no basis for such a conclusion. To illustrate, it is possible, but very unlikely, that the Court might say, with respects to intangibles which have acquired a business situs away from the domicile of the owner, that they may be taxed both by the state of domicile and by the state of business situs, or, where the owner of shares of corporate stock and the corporation issuing such shares are domiciled in different states, that each of said states may tax such shares.

Suffice it to say that as potent reasons were available for permitting double taxation of the intangibles involved in the Minnesota and Missouri cases as could be advanced for double taxation because of business situs or corporate domicile, and the considerations which favor the elimination of multiple death taxation are equally strong regardless of what the facts as to situs or the nature of the intangibles may be.

Proceeding, therefore, upon the assumption that multiple death taxation of intangibles is proscribed, we are still to consider what state has the power to impose the single tax. Is it the state of domicile of the decedent in all cases, or is it the state of domicile of the corporation in the case of corporate shares, the state of business situs in case the intangibles had such situs in a state in which the decedent was not domiciled or possibly some state other than that of the decedent's domicile for some other reason? These questions are still open.

Aside from legal complications, it would seem that the best interests of the several states which comprise the Union will be served if it be determined that intangible

personal property of every character may be subjected to death taxation at the domicile of the owner and not elsewhere. Very few, if any of the states, would wish to give up the right to tax certain intangibles of all residents for the privilege of taxing similar intangibles of certain non-residents; neither would such procedure comport with what is generally recognized as the sound principle of death taxation.

This Court is conversant with the movement for reciprocity in death taxation which has been under way for several years. It is described in detail in the brief filed on behalf of the Tax Commission of the State of New York and the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, as *amici curiae*, in *Blodgett v. Silberman*, 277 U. S. 1. Reciprocity is based wholly upon the principle that the state of domicile of a decedent has and should have power to impose a death tax on all of his intangibles and this principle has received official sanction in more than three-fourths of the states.

The progress which has been made in this movement is shown by the report of the Committee of the National Tax Association on Reciprocity in Inheritance Taxation to the Twenty-second National Tax Conference held in 1929. (See Proceedings National Tax Association, 1929, pp. 200-226.) It was summarized in the following language (p. 203):

> "The great success which has attended the campaign for reciprocity during the current year seems to indicate that in a short time the duplicate taxation of inheritances by the states will be abandoned absolutely. At the present time, thirty-seven states, the District of Columbia, the Territory of Hawaii, the Province

of Ontario of the Dominion of Canada, and the Territory of the Yukon, have cooperated in this movement to abolish double inheritance taxes, leaving but eleven states, these chiefly of the west.

"It is interesting to note that the entire Union east of the Mississippi River, except the State of Kentucky, is in the movement.

"Turning to statistics, it is interesting to note that assuming that the population of the United States is 105,000,000, as it was in the census of 1920, 91,398,578 may now die peacefully with the assurance that there will be no duplicate taxation by the states upon the intangible assets of their estates."

Should this Court hold that the state of domicile has not the power to assess a death tax with respect to any intangibles, of whatsoever character or howsoever situated, the reciprocity movement would be given an effect directly contrary to the purpose which gave it birth. If it should be held that intangibles which have a business situs in a state foreign to that in which a decedent is domiciled may only be taxed by the state of such situs, and that state has a reciprocity law, it would be prohibited from exercising its power of taxation until such time as the reciprocity law was repealed. In the majority of the states, the legislature does not meet annually. Thus, for a considerable period of time, intangibles having a business situs would be entirely exempted from taxation unless state lawmaking bodies should be called into special session for the purpose of repealing reciprocity laws. The confusion, inconvenience and loss of revenue which would follow from denying the state of domicile of a decedent the power to exact a death tax on account of any of his intangibles ought, if possible, to be avoided.

Should it be determined that the state of domicile alone has the power to tax all intangibles of a decedent,

reciprocity statutes would become superfluous, but no harm would result, as such a decision would effectually and completely bring about the end for which reciprocity was intended.

It may not be amiss to observe that reciprocity was designed to make effective the second of the principles laid down in the report of the committee appointed by the National Conference on Inheritance and Estate Taxation, viz., that all intangible personal property should be subjected to death taxation but once, and that by the state of domicile of the decedent. (See Reports of Proceedings of National Conferences on Inheritance and Estate Taxation held at Washington, D. C., February 19-20, 1925, and New Orleans, La., November, 1925.) These reports indicate that the best thought of economists, business men and tax officials throughout the Nation is in accord on the principle that the state of his domicile should have the power to impose a death tax on all intangibles of a decedent, to the exclusion of all other states.

Let us see what might be the result of a decision contrary to that contended for in this brief. Take, for example, shares of corporate stock and assume the decision to be that they may be subjected to a death tax only at the domicile of the corporation. A copper magnate is domiciled in New York at the time of his death. He is possessed of a large fortune represented principally by shares of stock in a corporation owning copper mines in Montana. The mining corporation was organized under the laws of Maryland and is domiciled there. Manifestly, there are substantial reasons why New York, as the state of domicile of the decedent, should have power to levy a death tax. The owner had resided there and his wealth as well as his person had been protected by its laws. Strong reasons may

also be advanced in favor of permitting Montana to collect a death tax. The corporation carries on its business there and the wealth was the product of its mines. What can be said in favor of a tax by Maryland? Very little. The corporation maintained an office there it is true, but such office was merely for the purpose of complying with strictly legal requirements. The corporation did no business in the state and had its domicile there only for reasons of convenience. Maryland had been repaid for all of the privileges which it granted to the corporation through the medium of taxes levied upon it. Surely, much more could be said in favor of the levying of a death tax by Montana than by Maryland. When we come to examine the law we find it to be definitely settled by this Court that Montana may not tax. *Rhode Island Hospital Trust Co. v. Doughton,* 270 U. S. 69. Is Montana to be denied this right only that it may be conferred upon Maryland? Or is the decision to be that the state of the decedent's domicile, the one which has the strongest legal and equitable claim, is to have the power to tax? We trust the latter.

It is true that some of the considerations that have been mentioned are, at best, persuasive, but it will now be argued that the law is not at discord with them.

Perhaps the first jurist of distinction to advance the thought that the Constitution of the United States forbade the extra-territorial death taxation of intangibles was Judge Clearwater of New York, who at the Forty-eighth Annual Meeting of the New York State Bar Association in 1925, in a masterful and emphatic manner, laid bare the abuses of nonresident death taxation and called for action to correct them. (See Report of New York State Bar Association, Vol. XLVIII, pp. 242-245.) As a result of Judge Clearwater's address, the New York State Bar Associa-

tion appointed a Committee on Extraterritorial Taxes which has given careful consideration to the subject and has submitted reports at the annual meetings held each year since 1925. (See Reports of New York State Bar Association, Vols. XLIX, L, LI, LII and LIII.)

The Court will be interested in the comment of Judge Clearwater on the Minnesota decision. In a communication to the editor of the New York Times, which appears in the issue of January 19, 1930, section 3, page 5, column 4, he said:

> "For several years the taxing authorities of the State of New York and of some other States have imposed upon the estates of decedents holding securities issued by corporations incorporated in or created by a State other than that of the domicile of the decedent an extraterritorial tax; that is, if a resident of New York holding stock in a corporation organized in or created by the laws of another State dies, his beneficiaries have been compelled to pay not only the Federal and New York transfer tax but sometimes a third, fourth and fifth tax imposed by a State under the laws of which the corporation or corporations were organized.
>
> "It frequently has been said that I was the first lawyer in the United States publicly to denounce this system and to characterize it as unconstitutional, illegal, extortionate and iniquitous. At all events, I did so in an address to the members of our New York State Bar Association.
>
> "The Supreme Court of the United States in the case of Frick v. Pennsylvania, 268 U. S. 478, sustained my contention.
>
> "In Blodgett v. Silberman, 277 U. S. 1, in construing Blackstone v. Miller, 188 U. S. 189, it was claimed by some of the refined casuists, of various State taxing authorities, that the Supreme Court had retreated from this attitude in the Frick case.
>
> "I was unable to concur in that view. Diverse opinion, however, is made negligible by the masterly

opinion of Justice McReynolds, who on Jan. 6 delivered the opinion of the court in the notable case of the Farmers' Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, appellant, v. the State of Minnesota, defendant. In that case, with admirable courage, force and clarity, that distinguished judge brushed aside the ingenious and involved sophistries of the advocates of extraterritorial taxation, pointedly saying that to sustain that doctrine and practice would be 'to disturb good relations among the States and produce the kind of discontent expected to subside after the establishment of the Union, and that the court is compelled to hold it untenable, and, to prevent misunderstanding, it is definitely overruled.' Justice Stone, in a separate opinion, concurred.

"This decision effectually and finally terminates a practice that is abhorent to any student of the common law of our constitutional system, a system which treats the several States as a Union, not as a mere confederation of distinct and separate sovereignties, and reaffirms the ancient and for centuries undisputed doctrine of the common law, *mobilia sequuntur personam* (things movable go with the person).

"Peradventure the taxing authorities of this and other States venture to ignore this determination of the Supreme Court, it may be necessary to institute proceedings in the Federal courts to hold them personally responsible for such loss as may be sustained by their illegal action, and the money expended in the effort to obtain redress.

"*Pari ratione* those of us who closely follow the decisions of the Supreme Court of the United States and of the Court of Appeals of this State constantly are impressed not only with conclusion predicated upon universally acknowledged fundamental principles of justice but by an entire absence of technical construction. Every problem courageously is confronted, justly and finally dealt with, there being none of that evasion of responsibility or vacillation not infrequently resorted to by lesser judicatories. Both courts justly are entitled to that stately appellation of the ancients —august tribunals of justice."

It is now definitely and, without doubt, finally determined that the power to impose a death tax on real property and tangible personal property is lodged with the state of actual situs and that no other state has the right to impose a death tax with respect thereto.

Keeney v. New York, 222 U. S. 525.
Matter of Swift, 137 N. Y. 77.
Frick v. Pennsylvania, 268 U. S. 473.

It is also the established doctrine of this Court that the maxim *mobilia sequuntur personam* is applicable to intangible personal property and that the situs of intangible personal property owned by a decedent at the time of his death is at his domicile.

Blodgett v. Silberman, 277 U. S. 1, *supra*.

Note should be made of the fact that the intangibles owned by the decedent in the case just cited, and which were held to have their situs at his domicile, included shares of stock in corporations foreign to the domicile and intangibles which had a business situs in a foreign state. The decedent was a resident of Connecticut. He had an interest as general partner, valued at $1,687,245.34, in the partnership of William Openhym & Sons, doing business in New York and organized under the Limited Partnership Act of New York. He also owned certificates of stock in New York, New Jersey and Canada corporations appraised at $277,864.25. If it is to be decided that but one death tax may be levied, it is necessary that the power to levy this tax be granted to the state of the domicile of the decedent with respect to all of the intangible personal property involved in the case of *Blodgett v. Silberman* unless this Court is prepared to overthrow the doctrine of that case.

It is respectfully urged that this Court should find that the situs governs in the death taxation of intangible

personal property as well as in the taxation of tangible personal property and real property. This would provide a simple and equitable rule, applicable alike to all classes of property owned by a decedent, and would put an end to many of the perplexing problems which have made the administration of estates a difficult and complicated matter.

If this Court should determine to lay down such a doctrine, it is possible that it will be necessary for it to distinguish or overthrow some of its *dicta* in the old cases and perhaps to discard some earlier holdings. It would seem, however, that such procedure is fully warranted at this time when the law of death taxation is being resettled. The major operation was performed when *Blackstone v. Miller* was overruled. Such minor additions and excisions as may be found necessary ought not to be viewed with alarm. It is quite evident that the true principles which underlie death taxation have not been clearly understood and applied. There has been some loose thinking and confusion of principles which apply to other forms of taxation but which rightly are inapplicable to death taxation.

Sight of the fact that death taxes are taxes upon the transfer of the property at the death of the owner has been lost. Death taxes have been imposed on the theory that they are the same as property taxes or other forms of excise taxes. Take the case of corporate stock, the state in which the corporation is organized has the undoubted power to levy an organization tax, franchise taxes and property taxes upon the property of the corporation within its jurisdiction, for all of which it delivers a *quid pro quo* in the form of governmental benefits, but because it has the power to levy these taxes is no reason why it should be permitted to levy a death tax upon the transfer of the shares of corporate stock which are owned by a nonresi-

dent. These shares have their situs at the domicile of the decedent.

The point may be illustrated by considering the taxation of United States bonds. It is within the jurisdiction of Congress to enact that bonds of the United States may be subjected to property taxation at the place where they are physically present and nowhere else. Should it be so enacted, if a resident of New Jersey owned such bonds and kept them in a safe deposit box in the City of New York, New Jersey would have no right to impose a property tax thereon because, under the Constitution of the United States, the bonds may not be taxed at all unless Congress consents. But New Jersey would still have the right to levy a death tax upon the bonds upon the death of the owner because his domicile is in that state and the death tax is not on the bonds as property but upon the transfer thereof at the owner's death. See *Plummer v. Coler,* 178 U. S. 115. This clearly shows that principles applicable to property taxation may have no place in death taxation.

The legal principle which it is believed should control in the death taxation of intangibles is that the transfer upon the death of the owner can only take place where the intangibles have their situs. The transfer of property can only take place where the property is. Property cannot be transferred where it is not. Inasmuch as intangibles have their situs at the domicile of the owner, it is only at his domicile that they may be transferred at his death. The state where the property is and is transferred is the only one which consistent with due process of law should have the power to exact a transfer tax. As before stated, all death taxation should be founded upon the situs of the property regardless of its character or use.

This Court is aware that the question of the death taxation of intangibles is not alone of the greatest importance but also that it is the cause of much uncertainty throughout the Nation at the present time, due to the decisions in the Minnesota and Missouri cases and doubt as to whether the rules laid down in those cases apply to classes of intangibles other than those directly involved. It would be extremely helpful if in this case this Court should see fit to lay down a broad principle applicable to all intangibles, and thus, once and for all settle the issue.

A careful examination of the decisions of this Court fails to show that it has ever passed directly upon the death taxation of corporate shares which is, of course, the most important question still open.

The attention of the Court is invited to the recent decision of the Jefferson County Court of Kentucky in *Equitable Trust Company of New York v. Kentucky State Tax Commission* in which it was held that shares of stock in a Kentucky corporation owned by a deceased resident of New York were not subject to death taxation in Kentucky. This decision was based upon the Minnesota opinion and is reported in the United States Daily of September 29, 1930. So far as can be ascertained, it has not as yet been officially reported.

All of which is respectfully submitted.

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SUPREME COURT OF THE UNITED STATES.

No. 2.—October Term, 1930.

Francis Beidler, II, and George Engelking, as Executors of the Last Will and Testament of Francis Beidler, Plaintiffs in Error, *vs.* South Carolina Tax Commission.	In Error to the Supreme Court of the State of South Carolina.

[November 24, 1930.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

On March 4, 1924, Francis Beidler, a resident of Chicago, Illinois, died in that State, leaving a will by which he bequeathed a portion of his personal property to his wife and children directly, and gave the residue in trust for their benefit and for charitable uses. The will was probated in Illinois, and Francis Beidler, II, and George Engelking, the appellants, qualified as executors.

At the time of the death of the testator, he owned 8,000 shares of the capital stock of Santee River Cypress Lumber Company, a corporation organized under the laws of South Carolina and doing business in that State. The remainder, 7,000 shares, were owned by the testator's wife and children. In addition, the Santee River Cypress Lumber Company was indebted to the testator in the sum of $556,864.22, for advances made by him to the company, and in the sum of $64,672 for dividends previously declared on his shares. The indebtedness was an open unsecured account which was entered upon the books of the company kept in South Carolina. The testator also kept a complete set of personal books in Chicago upon which appear entries of the amounts due him by the company except the item of dividends.

The total amount of the indebtedness for advances and dividends, $621,536.22, was included by the Attorney General of Illinois in the computation of the value of the decedent's estate for the purpose of fixing the inheritance tax payable to that State.

The executors filed with the South Carolina Tax Commission, as required by the Inheritance Tax Law of South Carolina, an affidavit setting forth all the above-mentioned assets. The payment of the succession tax to the State of South Carolina with respect to the shares of stock owned by the testator in the Santee River Cypress Lumber Company was not contested by the executors, and by agreement the value of these shares was fixed at $204 per share, or $1,632,000. The South Carolina Tax Commission also levied a tax upon the transfer of the indebtedness, overruling the claim of the executors that the State of South Carolina had no jurisdiction to impose such a tax and that the levy of it would constitute a deprivation of property without due process of law in violation of the Fourteenth Amendment of the Federal Constitution. This contention was renewed upon the appeal of the executors to the Supreme Court of the State of South Carolina. That court sustained the action of the Tax Commission with respect to the taxability of the transfer of the indebtedness, and the executors bring this appeal to review that part of the judgment.

In reaching its conclusion as to the validity of the tax, the state court relied chiefly upon the decision of this Court in *Blackstone* v. *Miller*, 188 U. S. 189. That decision has been overruled, and it is now established that the mere fact that the debtor is domiciled within the State does not give it jurisdiction to impose an inheritance or succession tax upon the transfer of the debt by a decedent who is domiciled in another State. *Farmers Loan & Trust Company* v. *Minnesota*, 280 U. S. 204; *Baldwin* v. *Missouri*, 281 U. S. 586. The transfer is taxable by the State of the domicile of the deceased owner. *Blodgett* v. *Silberman*, 277 U. S. 1. Open accounts, including credits for cash deposited in bank, fall within this principle, and its application is not defeated by the mere presence of bonds or notes, or other evidences of debt, within a State other than that of the domicile of the owner. *Baldwin* v. *Missouri*, *supra*.

It is sought to sustain the tax by South Carolina upon the ground that the indebtedness had what is called a "business situs" in that State, and the state court adverted to this basis for the tax. In *Farmers Loan & Trust Company* v. *Minnesota*, *supra*, this Court reserved the question of business situs, saying: "*New Orleans* v. *Stempel*, 175 U. S. 309, *Bristol* v. *Washington County*, 177 U. S.

133, *Liverpool & L. & G. Ins. Co.* v. *Orleans Assessors*, 221 U. S. 346, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile." But a conclusion that debts have thus acquired a business situs must have evidence to support it, and it is our province to inquire whether there is such evidence when the inquiry is essential to the enforcement of a right suitably asserted under the Federal Constitution.[1]

In the present case, beyond the mere fact of stock ownership and the existence of the indebtedness, there is no evidence whatever, having any bearing upon the question, save a copy of the decedent's account with the corporation, taken from his books which were kept by him in his office at Chicago. The various items of debit and credit in this account, in the absence of any further evidence, add nothing of substance to the fact of the indebtedness as set forth in the agreed statement and afford no adequate basis for a finding that the indebtedness had a business situs in South Carolina.

That the decedent was largely interested in the affairs of the corporation is apparent; he owned a majority of its stock, but nothing is shown which derogates from its existence as a corporation, transacting its business as such, with corresponding corporate rights and liabilities. The interest of the decedent as a stockholder was a distinct interest,[2] and the estate of the decedent has been taxed by South Carolina upon the transfer of his stock according to its agreed value. With respect to the items of indebtedness of the corporation to the decedent, the latter appears upon the record simply as a creditor, with his domicile in Illinois.

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[1]Kansas City Southern Railway Co. *v.* Albers Commission Co., 223 U. S. 573, 591-593; Creswill *v.* Knights of Pythias, 225 U. S. 246, 261; Northern Pacific Railway Co. *v.* North Dakota, 236 U. S. 585, 593; Ward *v.* Love County, 253 U. S. 17, 22; Davis *v. Wechsler*, 263 U. S. 22, 24; Railroad Commission *v.* Eastern Texas R. R. Co., 264 U. S. 79, 86; New York Central R. R. Co. *v.* New York & Pennsylvania Co., 271 U. S. 124, 126; Ancient Egyptian Order *v.* Michaux, 279 U. S. 737, 745.

[2]Van Allen *v.* Assessors, 3 Wall. 573, 584; Hawley *v.* Malden, 232 U. S. 1, 12; Eisner *v.* Macomber, 252 U. S. 189, 214; Rhode Island Trust Co. *v.* Doughton, 270 U. S. 69, 83.

For these reasons, the judgment of the state court, so far as it relates to the taxation of the transfer of the debts in question, must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice HOLMES.

The decisions of last term cited by the CHIEF Justice seem to sustain the conclusion reached by him. Therefore Mr. Justice BRANDEIS and I acquiesce, without repeating reasoning that did not prevail with the Court.

A true copy.

Test:

Clerk, Supreme Court, U. S.